National Competition Council

SUPPLEMENTARY SECOND TRANCHE ASSESSMENT OF GOVERNMENTS' PROGRESS WITH IMPLEMENTING NATIONAL COMPETITION POLICY

FEBRUARY 2001

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Abbreviations

ABA	Australian Bankers Association
ANZECC	Australian and New Zealand Environment and Conservation Council
ARMCANZ	Agriculture and Resource Management Council of Australia and New Zealand
ATC	Australian Transport Council
CoAG	Council of Australian Governments
CEO	Chief Executive Officer
CPA	Competition Principles Agreement
CSO	Community Service Obligation
DLWC	Department of Land and Water Conservation (New South Wales)
DNR	Department of Natural Resources (Queensland)
EPA	Environment Protection Authority (Western Australia)
EWRs	Ecological Water Requirements (Western Australia)
EWPs	Environmental Water Provisions (Western Australia)
HLSGW	High Level Steering Group on Water
ML	Megalitre
NCC	National Competition Council
NCP	National Competition Policy
NSW	New South Wales
NSWIC	New South Wales Irrigators Council
NT	Northern Territory
PAWA	Power and Water Authority (Northern Territory)
QCA	Queensland Competition Authority
QCC	Queensland Conservation Council
QIC	Queensland Irrigators Council
QR	Queensland Rail
ROL	Resource Operations Licence (Queensland)
ROP	Resource Operations Plan (Queensland)
SCI	Statement of Corporate Intent (Queensland)
SWMOP	State Water Management Outcome Plan (New South Wales)
SWP	State Water Projects (Queensland)
WA	Western Australia

WACC	Weighted Average Cost of Capital
WAMP	Water Allocation Management Plan (Queensland)
WMP	Water Management Plan (Queensland)
WRC	Water and Rivers Commission (Western Australia)
WRP	Water Resource Plan (Queensland)
WWF	World Wide Fund for Nature

Recommendations

Water

The Council considers that reforms implemented by New South Wales, Queensland, Western Australia and the Northern Territory meet all outstanding matters for NCP water reform for the second tranche.

The Council recommends that the 5 per cent suspension of 2000-01 NCP payments for Queensland, imposed in the June 2000 supplementary assessment because of insufficient progress on urban water pricing reform by Townsville, Cooloola and Johnstone Councils be lifted and all reimbursed. The Council bases this recommendation on commitments provided by Townsville and Cooloola to bring forward appraisal of the cost effectiveness of two-part tariff arrangements to June 2001. The Council will look for a commitment from Johnstone Shire on this matter as part of the third tranche assessment.

The Council also provides the following comments on water reform matters.

(a) Water property rights

With the passage of legislation by New South Wales, Queensland and Western Australia, all jurisdictions have now passed legislation to define water rights more clearly, separate water entitlements from land title and establish resource management and trading regimes to promote efficient and sustainable water use. However, one of the outcomes of separating water rights from land title has been uncertainty by the financial sector as to the basis to lend funds and hold security over title to water. Perceptions of increased risk and, consequently, higher costs of capital for borrowers have been recognised by the High Level Steering Group on Water (HLSGW)[1] as having the potential to undermine the benefits from implementation of the broader water reform agenda.

It is the Council's view that in establishing systems of well-defined water property rights, there is a need to ensure water users get the most certainty they can about the nature of water property rights, and absolute security on ownership. For this reason, the Council is reserving the right to re-examine the areas of water property rights and trading arrangements in the third tranche assessment across all jurisdictions based on the efficacy of new arrangements.

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[1] The High Level Steering Group on Water (HLSGW) is responsible for intergovernmental co-ordination of the water reform agenda.

(b) Institutional reform

Queensland and the Northern Territory have met commitments in relation to institutional arrangements. These remove regulatory functions from water service provision.

In future assessments, the Council will look for a public statement of reasons if the Northern Territory Treasurer does not adopt the pricing recommendations of the Utilities Commission.

Competitive neutrality: Queensland

In July 1998, the Queensland Competition Authority (QCA) found that Queensland Rail (QR) was not applying appropriate competitive neutrality principles in respect to fares on the Brisbane to the Gold Coast route. The QCA concluded that:

- the current price relativities between rail and bus operators do not promote the long term efficient allocation of resources in the public transport market or promote ecologically sustainable development;
- the current arrangements do not promote competition;
- there are no government policies, guidelines, directions or laws which would obviate the requirement that the principle of competitive neutrality should apply to QR; and
- there are no social welfare, equity, occupational health, safety, industrial relations, economic or regional development matters, or matters related to the availability of goods and services to consumers or any class of consumers which justify this breach of the principle of competitive neutrality.

The QCA recommended the establishment of a community services obligation (CSO) framework which reflects the relative contribution of the various public transport modes to the Government's broader goals, regardless of whether the services are in public or private ownership.

At the time of the supplementary second tranche assessment of 30 June 2000, Queensland had made progress towards the development of a CSO Framework but had not completed the Framework. Accordingly, the Council was not satisfied that the State was meeting its second tranche NCP competitive neutrality obligations.

On 2 November 2000, the Council of Australian Governments (CoAG) provided further direction to the Council relevant to assessing compliance with NCP competitive neutrality principles. With regard to CSOs, CoAG directed that governments are free to determine who should receive a CSO payment or subsidy, which should be transparent, appropriately costed

and directly funded by government. CoAG also directed that there is no requirement under NCP to conduct a competitive process for the delivery of CSOs. CoAG's statements are directly relevant to the supplementary assessment of Queensland's implementation of competitive neutrality principles within QR.

Since 1 July 1999, QR has been contracted to the Queensland Government to provide suburban and inter-urban passenger services at an annual cost of $283 million. The Queensland Government has advised that the contract was independently assessed prior to finalisation. This addresses the CoAG requirement that CSOs be appropriately costed and directly funded by government.

In December 2000, Queensland Transport produced a confidential document entitled 'A Community Service Obligation Framework for Public Transport in South East Queensland'. The Framework is designed to address the identification and specification of public transport CSOs for South East Queensland.

The Council will recommend on the suspension of 10 per cent of Queensland's 2000-01 NCP payments currently in place when the Framework is further developed and publicly released. The Council is currently working with Queensland on these matters. The objective is that Queensland publicly releases the Framework, providing a clear statement identifying the Government's CSO objectives for public transport in South East Queensland.

Driver demerit points: Northern Territory

The Northern Territory Government is proposing only a partial scheme: to cover drivers of heavy commercial vehicles and to apply not before February 2002. The Government has requested an exemption from the ATC for the driver demerit points obligation, but at this time there is no indication as to whether the ATC will support the request.

As there is as yet no response to the request, the Council cannot confirm either that an appropriate demerit points arrangement will be in place, or that the Territory is exempt from the demerit points obligation. In these circumstances, and given the time taken by the Northern Territory to implement an approach on this matter consistent with its obligations under NCP, the Council's view is that the Northern Territory has not satisfactorily complied with second tranche NCP road reform obligations.

Consistent with directions from the CoAG, in considering implications for NCP payments, the Council has had regard to:

- the extent of the overall commitment to the implementation of NCP by the Northern Territory;

- the effect of the Northern Territory's approach on other jurisdictions; and

- the impact of the Northern Territory's failure to implement the full demerit points reform.

The Council considers that the Northern Territory, having implemented all aspects of the second tranche road reform program other than a full demerit points scheme, has demonstrated a generally strong commitment to achieving its obligations under NCP. However, the Council considers that the Northern Territory's failure to implement a comprehensive demerit points arrangement may reduce road safety. It could mean that drivers who would otherwise have had their licences suspended or cancelled through an accumulation of demerit points would be able to continue to drive. This effect may be felt most directly in the Northern Territory, but also in other States and Territories to the extent that drivers licensed in the Northern Territory who would otherwise have their licence suspended or cancelled are able to drive.

The Council recommends that the current suspension of 5 per cent of the Northern Territory's NCP payments for 2000-01 be continued pending the decision by the ATC on whether the Northern Territory should obtain an exemption for the demerit points reform. The Council considers that suspension of at least 5 per cent of NCP payments is necessary to encourage compliance with this aspect of the road reform program.

In the event that the ATC agrees to exempt the Northern Territory from the demerit points reform, the Council recommends that the suspension be lifted and the suspended payment provided. In the event that the ATC does not agree that the Northern Territory should have an exemption for this aspect of the reform program, the Council recommends that the suspension be confirmed.

Summary of findings and recommendations: second tranche supplementary assessment January 2001

NCP reform and relevant jurisdiction(s)	Findings and recommendations
Water: Remaining elements of the second tranche program	
<u>New South Wales</u> Legislation to establish water allocation and trading framework	<u>New South Wales</u> Legislation enacted and reform commitments met. The Council will review the efficacy of these arrangements in the third tranche assessment in June 2001.
<u>Queensland</u> Legislation to establish water allocation and trading framework	<u>Queensland</u> Legislation enacted and reform commitments met. The Council will review the efficacy of these arrangements in the third tranche assessment in June 2001.

Urban water pricing reform Institutional reforms <u>Western Australia</u> Legislation to establish water allocation and trading framework <u>Northern Territory</u> Institutional reforms	Reform commitments met. For the third tranche assessment in June 2001, the Council will assess progress of Townsville City and Cooloola Shire against the commitments, and seek justification for the stance of Johnstone Shire. Reform commitments met. <u>Western Australia</u> Legislation enacted and reform commitments met. The Council will review the efficacy of these arrangements in the third tranche assessment in June 2001. <u>Northern Territory</u> Reform commitments met.
Competitive neutrality: Queensland Rail	The Council will recommend on the current suspension of 10 per cent of Queensland's NCP payments for 2000-01 following the public release by Queensland of the document entitled '*A Community Service Obligation Framework for Public transport in South East Queensland*'. Consistent with the 3 November 2000 CoAG direction relating to the assessment of competitive neutrality compliance, the Framework should clearly identify the Government's CSO objectives for South East Queensland
Road reform: driver demerit points	The Northern Territory has not satisfactorily met the second tranche NCP obligation to implement a driver demerit points scheme. While it has sought an exemption for this reform from the Australian Transport Council (ATC), to date there is no information on the ATC's approach. The Council recommends that the current suspension of 5 per cent of the Northern Territory's NCP payments for 2000-01 be continued pending the decision by the ATC on whether the Northern Territory should have an exemption for the demerit points reform.

1 Background to the supplementary assessment

Under Australia's National Competition Policy (NCP), the National Competition Council assesses the progress of governments against the reform obligations in the NCP Agreements.[2] Originally, the Council of Australian Governments (CoAG) scheduled three tranches of assessments: prior to July 1997, July 1999 and July 2001. CoAG recently extended the NCP assessment process, resolving that there be ongoing annual assessments after the third tranche assessment (prior to July 2001), prior to a review of NCP before September 2005 (CoAG 2000).

The Commonwealth makes payments to the States and Territories where they achieve satisfactory progress against the reform obligations in the NCP Agreements. Approximately $1.1 billion in NCP payments are available in the second tranche period (1999-00 to 2000-01). Appendix 1 of this report sets out the payments made to States and Territories under the second tranche of NCP.

The Council's June 1999 second tranche assessment found that governments had generally achieved sound progress, although some reform obligations had not been fully addressed. At that time, the Council considered the best approach was to allow an additional period for governments to complete their programs. The Council recommended that governments' progress with several second tranche matters be re-assessed through supplementary assessments at various times over the period to December 2000.

The schedule of supplementary second tranche assessments is provided in Table 1.1. The December 1999, March 2000, June 2000 and September 2000 assessments have been completed.[3] The reports of these assessments are public documents (NCC 1999b, 2000a, 2000b, 2000c). They are available on the Council's web site at http://www.ncc.gov.au.

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[2] The three NCP Agreements are reproduced in NCC (1998).

[3] The Council had scheduled an additional supplementary assessment for October 2000, to consider progress by the Northern Territory against second tranche water reform obligations. As the Northern Territory had implemented relevant water reform obligations, the October supplementary assessment was conducted as part of the September 2000 supplementary assessment

Table 1.1: Supplementary second tranche assessments

NCP matter	Relevant jurisdictions	Date of assessment
Electricity: implement regulatory arrangements recommended by structural review	South Australia	31 December 1999
Various elements of the second tranche water reform package	Queensland, South Australia, Tasmania, Northern Territory	31 December 1999
National gas reform: implement recommendations of the review of the *Cooper Basin (Ratification) Act 1975*	South Australia	31 December 1999, with a further supplementary assessment 30 June 2000
Remaining elements of the NCP second tranche road reform package	Commonwealth, Queensland, Western Australia, South Australia, Tasmania, ACT, Northern Territory	31 March 2000
National gas reform: application of the National Gas Access Code	Queensland	30 June 2000
Various elements of the second tranche water reform package	New South Wales, Queensland, Western Australia, South Australia, Tasmania	30 June 2000
Road reforms not completed at 31 March 2000	Commonwealth, Queensland, Western Australia, Northern Territory	30 June 2000
Legislation review: dairy industry	New South Wales, Queensland, Western Australia, ACT	30 June 2000
Legislation review: domestic rice marketing arrangements	New South Wales	30 June 2000
Legislation review: compulsory third party insurance for motor vehicles	Victoria, Tasmania	30 June 2000
Legislation review: workers' compensation arrangements	Victoria	30 June 2000
Legislation review: professional indemnity insurance for solicitors	Victoria	30 June 2000
Legislation review: Australian Postal Corporation Act 1989	Commonwealth	30 June 2000
Various elements of the second tranche water reform package	South Australia, Northern Territory	30 September 2000
Competitive neutrality: Queensland Rail	Queensland	31 December 2000
Road reform: driver demerit points	Northern Territory	31 December 2000
Remaining elements of the second tranche water reform package	New South Wales, Queensland, Western Australia, Northern Territory	31 December 2000

On 2 November 2000, the Federal Treasurer announced a decision in relation to NCP payments for 2000-01, covering the matters addressed in the June 2000 and September 2000 assessments. The Treasurer decided that all States and Territories should receive their full allocation of NCP payments with the exception of Queensland and the Northern Territory. For these two jurisdictions, the Treasurer applied:

- a 10 per cent suspension of Queensland's NCP payments pending a further supplementary assessment by the Council in December 2000 as to progress finalising a passenger transport Community Service Obligation (CSO) framework for South East Queensland, which would include defining and costing CSO obligations on Queensland Rail;

- a 5 per cent suspension of Queensland's NCP payments pending a further supplementary assessment by 31 December 2000 as to progress implementing two-part water tariffs, where cost effective, relevant to Townsville City Council and possibly Cooloola and Johnstone Councils.

- a 5 per cent suspension of the Northern Territory's NCP payments pending a further assessment by 31 December 2000 as to whether an appropriate driver demerit point scheme has been introduced or an appropriate CoAG exemption obtained.

This report covers the Council's further investigations of progress and provides recommendations relating to the NCP payment suspensions, as requested by the Treasurer. The Council provided its report to the Treasurer in February 2001 rather than by 31 December 2000. The Council did this to ensure it could adequately consider legislation relating to water allocation and trading, which was not passed until late 2000, and arrangements relevant to the implementation of competitive neutrality in Queensland, which did not reach the Council until January 2001.

2 Water

Water reform matters relating to New South Wales, Queensland, Western Australia and the Northern Territory are considered in this supplementary assessment.[4] The assessment completes the Council's consideration of jurisdictions' progress against second tranche water reform obligations.

As this is a supplementary assessment concerned with remaining second tranche water reform commitments, the Council has considered jurisdictions' progress against the second tranche water assessment framework. The framework is contained in Appendix 2 to this report.

Each State and Territory is addressing the CoAG water reform objective of arresting widespread natural degradation in a distinct manner. While each approach shares common elements of tradeable water rights separated from land title and recognition of the environment's right to water, the mechanisms for achieving these differ.

The framework is sufficiently flexible for governments to undertake changes in a manner that best meets their economic, environmental and social objectives. Further, the framework provides for tariff reforms in urban areas only where this is cost effective. The purpose of this is to ensure that reforms that are implemented provide a net benefit to the relevant community.

The Council's role is to assess reforms by each government against the water reform framework, not to compare the reform performances of the different jurisdictions. Each of the reforms can be met by different means but a judgement as to whether particular arrangements are superior to others is not the benchmark for the assessment.

The Council has recently released a range of papers explaining the CoAG water reforms. The Council's intention in releasing these papers was to assist the community's understanding of water reform and the benefits available to metropolitan, regional and rural communities. These papers cover urban and rural water reform, and have been widely distributed. The Council is also currently preparing additional background papers on issues in water reform relevant to the third tranche assessment.

In addition to meeting with governments, the Council Secretariat has met with a number of irrigator, environmental and other community groups

[4] The Council's previous considerations of progress against water reform commitments are contained in Volume 2 of the second tranche assessment report (NCC 1999a), and supplementary assessments conducted in December 1999 (NCC 1999b), June 2000 (NCC 2000b) and September 2000 (NCC 2000c).

during the past six months. These meetings have provided valuable information about reform challenges and government responses. The Council will continue these meetings in the period prior to the third tranche assessment.

The chapter makes recommendations on the assessment of progress against outstanding water reform commitments for New South Wales, Queensland, Western Australia and the Northern Territory in turn.

New South Wales

Reform commitment: Allocations and trading

At the June 1999 assessment, the Council found that while entitlements for regulated rivers and groundwater met the commitments, arrangements on unregulated rivers were not consistent with the agreement to provide for comprehensive systems of water entitlements backed by separation of water property rights from land title. The Council was not satisfied that commitments had been met and recommended a further supplementary assessment be conducted in June 2000.

The June 2000 supplementary assessment found that the NSW Water Management Bill 2000 to establish a water allocation and trading framework had not been passed. The Bill contained provisions for water for the environment, arrangements to provide for systems of water entitlements, separation of water rights from land title, and trading.

Having regard to the fact that the legislation was introduced into the Parliament, the Council considered the best course of action was to undertake a further supplementary assessment by 31 December 2000, to ensure legislation consistent with the water reform commitments was substantially in force. The Council indicated that, at this time, it would review the legislation and consider any submissions it received concerning the consistency of the new arrangements with the reform commitments. Should the legislation not be in force, the Council was of the view that the failure would have implications for ten per cent of the State's NCP payments for the year 2000-01.

Developments since June 2000

Water Management Act 2000

The *Water Management Act 2000* (the Act) was passed by the New South Wales Parliament on 30 November 2000. The Act was assented to by the New South Wales Governor on 8 December, with most provisions taking effect from 1 January 2001. The Council has been provided with a copy of the Act and has undertaken an assessment of the Act.

The Act is the principal legislative mechanism for protecting the water environment and managing sustainable water use in New South Wales. The Act delivers reforms in relation to water for the environment, ecological sustainable development, licensing, and trading, and has been the subject of nearly two years of review, discussion papers and comprehensive public consultation that began in 1997. It repeals a number of pieces of existing legislation including the primary piece of water legislation, the *Water Act 1912*. It also introduces a framework for sharing water between the environment and consumptive users, and provides for explicit, strategic decisions for the environment through a community/government partnership.

The objectives of the Act are to:

(a) apply the principles of ecologically sustainable development;

(b) protect, enhance and restore water sources, their associated ecosystems, ecological processes and biological diversity and their water quality;

(c) recognise and foster the significant social and economic benefits to the State that result from the sustainable and efficient use of water, including benefits to the environment, urban communities, agriculture, fisheries, industry and recreation, culture and heritage, and to the Aboriginal people;

(d) recognise the role of the community, as a partner with government, in resolving issues relating to the management of water sources;

(e) provide for the orderly, efficient and equitable sharing of water from water sources;

(f) integrate the management of water sources within the management of other aspects of the environment, including the land, its soil, its native vegetation and its native fauna;

(g) encourage the sharing of responsibility for the sustainable and efficient use of water between the Government and water users; and

(h) encourage best practice in the management and use of water.

New South Wales has identified the major benefits of the new Act as better defined rights and increased compliance responsibilities that accompany those rights, real community/government partnerships, clear and comprehensive water management plans, streamlined transfers of water, and measures for protection, restoration and integrated sustainable management of aquatic ecosystems.

Provision for the environment

For the first time in the history of New South Wales, the environment has been enshrined in legislation as requiring its own share of water to ensure the fundamental health of all water sources including rivers, groundwater, estuaries and coastal water, and dependent ecosystems.

The Act provides for specific protection of water for the environment and dependent ecosystems, which has flow-on effects for wetlands and biodiversity, by the creation of three types of environmental water allocations.

- **Environmental health water**

This is defined as *all water committed for fundamental ecosystem health at all times*. It cannot be used for any other purpose and is not tradeable.

The existing environmental flow rules on the regulated rivers (the Gwydir, Namoi, Macquarie, Lachlan, Murrumbidgee, the Hunter) and on the unregulated Barwon-Darling will be reviewed in accordance with the new water management plans of the Act.[5]

- **Supplementary environmental water**

These are *allocations for specific environmental purposes subject to triggers for critical events*, such as bird breeding or fish passage. If the pre-set triggers are not activated, the water may be reallocated for consumptive use.

Supplementary environmental water will typically be used where it is judged that specific ecosystem needs cannot be met by environmental health water alone. For example, an unforeseen slug of salinity moving down a river could be diluted with supplementary flow. The advantage of this form of allocation is that water is not locked out of the specification process of the bulk access regime (see below), and may be reallocated. Supplementary environmental water allows for adaptive management based on seasonal variations.

The triggers and the reallocation process for supplementary environmental water will be specified in water management plans or Minister's plans.

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[5] These existing environmental flow rules were set for a period of 5 years in 1998. As New South Wales is at the end of Year 3 of these rules and plans under the Act specify terms of ten years duration, these rules were not able to be rolled over to form the basis of bulk access regimes that would be set for ten years. The existing environmental flow rules will continue to operate until they are overtaken by the new bulk access regimes. These rules will be the initial input when developing new water management plans.

- **Adaptive environmental water**

This is *an access water entitlement that a licence holder has decided to use for agreed environmental purposes.* It is discretional to licence holders so that it can be converted back to consumptive use or trade as the holder sees fit. It can only be used where it is consistent with a water management plan or use approval to ensure the intended ecosystem does benefit.

Water management plans

Water management plans (plans) on all water sources may be created to address such issues as water sharing, water use, drainage and floodplain management, controlled activities, aquifer interference, environmental protection, and any other matter the Minister decides on. They are the means of reconciling multiple objectives and ensuring the integration of economic, social and environmental aspects.

Plans are made by the Minister for Land and Water Conservation, on advice from water management committees with the concurrence of the Minister for the Environment. In relation to water sharing, plans will:

(a) establish environmental water rules for an area in relation to each class of environmental water;

(b) identify water for basic landholder rights;

(c) identify the requirements for water for extraction under access licences;[6]

(d) establish a bulk access regime for the extraction of water under access licences having regard to environmental water rules; and

(e) establish transfer rules for an area.

Plans contain mandatory conditions which set the conditions for access licences and approvals in an area. Discretionary conditions may also be set by the Minister to deal with local, site-specific factors.

Plans provide for ongoing adaptive management by recognising that full information will not always be available at any one point in time. They will provide for a whole-of-catchment approach and seek to link other natural resource management strategies for the catchment. The plans set future directions as well as day-to-day management and approvals.

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[6] This would include the review of dormant rights as contained in previously issued sleeper and dozer licences.

The plans will be of ten years duration. There will be a mandatory mid-term review of a plan to determine whether the plan is delivering the water management objectives against the principles contained in the Act. Following a review, the Minister may decide that no action is required. Alternatively, the Minister may decide to vary a plan at any time after consulting with a water management committee. All changes to the bulk access regime during the currency of a plan are subject to compensation. The Minister will also ensure that plans are audited at intervals of no more than five years.

Water management committees

The Act formally recognises and strengthens the existing arrangements in New South Wales for water management committees to manage all water sources including river and groundwater areas, estuaries and coasts. The committees' role is to prepare or review plans for water management areas, or to undertaken any specific task in relation to water management. Drafted plans will go through extensive exhibition and consultation processes before being signed off by the Government.[7]

The Minister is able to appoint water management committees of between 11 and 20 representatives. These community representative committees provide for community-based planning with their work supported by the expertise, resources and information of government agencies. Hence, the community is involved in the planning process recognising that local solutions will be better and last longer. Committees will operate on a consensus decision-making basis.

State water management outcomes plan

The New South Wales Government is to gazette a State Water Management Outcomes Plan (SWMOP) to set over-arching policy contexts, and provide guidance to water management committees on state and national targets and strategic outcomes from the management and use of water. This will give guidance to committees in formulating their own local plans and the determination of bulk access regimes for priority areas within 12 months.

The SWMOP will be established as a priority within the next few months by order in the gazette and will have effect for five years. It will be consistent with government policy statements including those on salinity strategies, objectives for water and river flow, and the ANZECC National Principles for the provision of water for ecosystems.

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7 Draft plans will be exhibited in newspapers and are open to the public for inspection for 40 days during which time submissions may be made to the Minister before finalisation.

Minister's plans

There will be instances where there are areas that are not within a water management area, a plan is not in force, or a plan is not sufficiently comprehensive to deal with certain issues. The Act provides for the Minister for Land and Water Conservation to prepare and gazette a Minister's plan. The environmental water rules contained in a Minister's plan must have the concurrence of the Minister for the Environment. Minister's plans must be reviewed every five years.

Implementation programs

The Department of Land and Water Conservation (DLWC) will develop implementation programs to specify the operational details of how water management plans or Minister's plans will be implemented.

For example, a plan might specify wetland inundation for breeding of migratory birds as an objective. Biologists and hydrologists would translate this requirement into rules for protecting flows at certain river heights and times of the year. These rules would be contained in an implementation program which would give greater definition to the flow rules to provide the level of protection sought in the plan.

The effectiveness of implementation programs will be reported in DLWC annual reports.

Water property rights

All rights to the control and use of water are vested in the Crown. Under the Act, landholders may obtain access to water through the provisions for basic landholder rights (domestic and stock water, native title rights, and harvestable rights). Water rights over and above these basic rights will be dealt with through the access licence provisions.

The Act replaces statutory riparian rights[8] with basic **domestic and stock rights**. New South Wales states that riparian rights were frequently abused to provide water for commercial use including irrigation. The new domestic and stock rights will be provided solely for the purposes of normal household purposes such as watering gardens, and watering stock and will apply to landholders that have a river, estuary or lake frontage or an aquifer underlying the land.

Harvestable rights recognise as a right, an entitlement for an owner or occupier of land to construct dams to capture and use a minimum of ten per cent of the average rainfall runoff in their area (overland flow), without the need for an access licence. To achieve this, the Minister will

[8] Water rights that were previously provided to owners of land which abutted a lake or river.

publish a harvestable rights order in the gazette to set the procedures to calculate average rainwater run-off, and the proportion that may be captured by landholders for an area. These rights are to be used for domestic purposes and cannot be used to supply other properties with water or to construct dams that obstruct river flows.[9] Harvestable rights were provided for in the farm dams policy of 1999 and have been carried forward and incorporated into the Act.

Native title rights recognise the rights of native title holders to take and use water up to a maximum amount to be determined by regulation, without the need for an access licence.

Bulk access regimes

The Act establishes bulk access regimes for each water management area. The outcome of these regimes is essentially the pool of water that is available for consumptive use, after environmental and basic landholder rights have been determined. These regimes will set the rules to reserve sufficient water to meet environmental needs, basic landholder water rights, and then provide for water available for extraction, specifying the process for calculation of the total volumes to be shared among users under different climatic conditions.

The Minister, on the advice of water management committees, will set the initial bulk access regime for all priority water management areas[10] within 12 months of passage of the Act. The regimes will have a term of ten years and will form the initial baseline for the establishment of water management plans.

Access licences

Access licences entitle the holder to take water from water sources under specified conditions. The access licence specifies the proportion of the water available for extraction under the bulk access regime that the holder is entitled to take. It may be expressed as a number of units, megalitre volume or a percentage share, translated from time to time into an extraction volume. Resource management adjustments to bulk access regimes do not affect shares. The reliability of supply relates to the level of security of the licence. Hence there are categories for general and high security licences.

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9 Unless declared by the relevant harvestable rights order to be a minor stream.

10 These areas cover water sources classified as high risk, high stress or high conservation value.

The Act creates an access licence and a separate use approval. An access licence may, or may not, be broken into two components. These entitle holders to:

- **a share component –** the share is how much of the available water can be used within a specified water management area or water source. This may be expressed as a maximum volume over time, a proportion of the available water, or a proportion of the storage capacity of a particular dam or storage works. This represents the fundamental tradeable right; and

- **an extraction component –** This is defined as the conditions to physically take the share component of water from a river or aquifer, at specified times, rates, or locations. The Minister may declare that the access licences under a plan be issued separately for the share components and extraction components, and these components may be held by different persons.

Shares in available water may be assigned generally or to specified categories of access licences. The Act applies access licences to all water sources including the existing categories of access licences that New South Wales has been using in recent years.[11] These include access licences for local water utilities, major utilities, domestic and stock, regulated river (high security, general security and supplementary water), unregulated river, and aquifers.

The Act creates priorities between licence types. Local water utility, major utility and domestic and stock access licences have priority over all other access licences. This is followed by regulated river (high security) licences which have priority over regulated river (general security) licences and regulated river (supplementary water) access licences. Regulated river (general security) licences have priority over regulated river (supplementary water) access licences. Supplementary water access licences have the lowest priority and security of any licence type, may be traded where this is permitted by a plan, and are not subject to compensation.

If water allocations need to be reduced, the water allocations of the higher priority licence are reduced at a lesser rate than the water allocations of the lower priority licence. From time to time, the Minister may make an available water determination in writing as to the availability of water for

[11] The Act also allows the exclusion of certain provisions from applying in certain areas or to specified activities. For example, the Act will be used to ensure the current practice of people taking water from coastal water do not require an access licence.

the various categories of access licence in a specified water management area.

An applicant must apply for a licence to the Minister who may grant or refuse the application depending on whether it complies with a plan. Access licences will be issued for 15 years (unless a user requests a shorter period), and 20 years for public utilities. Licence holders may apply within 12 months of expiry for priority renewal of an access licence.

Approvals

An access licence does not confer a right on any person to use water for a particular purpose. Rather, a water use approval confers the right to use water for a specified purpose at a specified location. It may be issued up to three years for a controlled activity approval, and ten years for a water use or aquifer interference approval. It can only be transferred as a result of transfer of the land.

Register

The Act provides for the establishment of a public register of access licences, to include records of all applications for a licence, and every licence that is approved, renewed, surrendered, suspended, cancelled or transferred as an information source. Third party interests will be listed on the public register by the licence holder, or third party interests can apply themselves to register their interests. Applications for licence transfers will also be required to obtain the written consent of third party interests.

The form and content of the register will be established by regulation.

The Act also requires a register of available water determinations and approvals to be kept and made publicly available at DLWC.

Trade

The Act provides for transfers of both access licences and their component entitlements. By separating the share component right from the physical extraction and use approval, transactions in shares can occur without the necessarily complex environmental assessments required for extraction and use. Shares and volumes translated according to bulk access rules will therefore be freely divisible and tradeable.

Given both access licences and their component entitlements are tradeable, users have many trading options. For example, a licensee may have the right to extract 5ML per day but may only need 2ML per day. Because the total flow in the river is limited, the unused 3ML per day entitlement could be sold to a neighbour who needs it, either permanently or for a short term. Alternatively, a primary producer with a 5ML per day

entitlement may wish to retire from active farming but keep the entitlement and lease it to others as a form of retirement income.

An application to trade is to be dealt with in accordance with any local transfer rules established by water management plans. The parties to a proposed transfer of an access licence or water entitlement between licence holders must apply to the Minister for consent. The transfer will take effect on the date the transfer is entered on the register. For interstate trading, the Minister may enter into an agreement with a Minister of another State for the interstate transfer of access licences or interstate equivalent.

Compensation

The Act provides for compensation in those circumstances where the Government, in the public interest, changes the bulk access regime during the life of a water management plan. It can also be paid where there is a need for compulsory acquisition of water licences. Any water users who suffer economic loss as a consequence, may make a claim for compensation. The Minister will determine the level of compensation based on advice of the Valuer-General as to the market value of the water foregone.

The Act allows for appeals on the quantum and timing of compensation to be considered by the New South Wales Land and Environment Court. The validity of plans is also subject to appeal to this Court within three months of gazettal.

Water Investment Trust

The Act provides for the establishment of a Water Investment Trust to hold money from a variety of sources, including water licence holders, conservation groups, the private sector and government, to be used for activities that result in environmental enhancement, particularly investments in water saving projects. Details of the membership, funding and ongoing operation of the Trust will be created by regulation after consultation with key stakeholder groups.

Submissions from other parties

The Council received three submissions in relation to this assessment in the course of its consultations on the Act. These submissions are available from the Council on request.

The New South Wales Irrigators Council (NSWIC) provided two submissions in relation to this assessment. One submission related to the issue of a test for water property rights, and the other submission addressed the issues before the Council for this supplementary assessment.

The Council also received a submission from the Australian Bankers Association (ABA) in September 2000. While a number of the concerns raised by the ABA were subsequently addressed in the final amendments to the Act, the discussion of issues in water property rights is still relevant to this assessment.

The Council took account of the issues raised in these submissions and has referred to them where relevant.

Assessment

The Council commends New South Wales on the passage of landmark water legislation that provides for reforms that seek to address CoAG commitments on water reform. Assessment comments on each aspect of the reform commitments are provided below.

Public consultation and education

The New South Wales Government has engaged in extensive public consultation on all aspects of the reforms contained in the Act dating back to 1997, and through the December 1999 White Paper (NSW 1999). The White Paper alone generated some 70 meetings in Sydney and regional centres, and over 800 submissions.

The Act was introduced in June 2000 and passed in November 2000. Debate on the Bill in the New South Wales Legislative Council was the second longest in New South Wales Parliamentary history, reflecting the seriousness with which New South Wales has approached reform. In the course of passage of the legislation, some 380 amendments were moved, based on further input from key stakeholder groups.

The Act enshrines the central role of area water management committees in formulating plans. This represents a clear partnership between government and the community based on a whole of catchment approach.

The Council commends New South Wales on the very extensive and robust forms of public consultation and education it has engaged upon in the course of passing this Act. The Council's view is that New South Wales has fully met its requirements in obtaining and considering the views of all stakeholders in the reform process.

Recognition of environmental needs/rights

Two major achievements of the *Water Management Act 2000* are the establishment of a legislative provision enshrining the principle of ecologically sustainable development, as well as legislative recognition of the need to share water with the environment. The Act gives the environment a prior right to water over consumptive use, to protect the fundamental health of all water sources and dependent ecosystems.

It is the Council's view that the creation of environmental allocations to first meet a base level of surface/groundwater health, and then to use other allocative mechanisms based on triggers or water users discretion to meet further environmental objectives as identified in plans, establishes an adaptive management system that will allow New South Wales to make strategic decisions for provision of water for the environment where it is needed.

The use of water management plans will be the principal means of reconciling the multiple objectives associated with water use and ensuring consideration and integration of economic, social and environmental objectives. Plans will provide for ten years of certainty with a full mid-term review at five years. The DLWC will develop one-year implementation programs to give effect to the objectives of plans. A report on the effectiveness of future implementation programs will be made in future DLWC annual reports.

The New South Wales Irrigators Council (NSWIC) submission argues 'the Act does not establish environmental contingencies in the sense of separate water entitlements...It merely provides for the taking of water from access licence holders following a change of management plans.' While it is true that environmental contingencies per se are not created under the Act, the establishment of environmental flow rules (as have existed in New South Wales since 1998), will result in the creation of separate water entitlements for the environment.

The breadth of measures contained in the Act to provide water for environmental health is an historic achievement. The Council recognises New South Wales as being at the forefront of developments in this area. The Council considers that New South Wales has fully met its commitments in this area.

Separation of water and land title

The Act provides for the full separation of water access rights for all surface and groundwater, allowing a water access licence to be held by anyone independent of land ownership.

One of the effects of this reform will be a change in the way land is valued. Historically, land values have been based to a large degree on water rights. These are now freely transferable. As a result, New South Wales has decided that the Valuer-General should continue to take account of the value of water rights in land valuations under the provisions of the Act for the next five years. However, New South Wales also recognises that:

> *there is some uncertainty as to whether this approach to land valuation is appropriate in the long term. This is because the formal separation of water rights from*

> *land makes their continued incorporation into land valuations increasingly incompatible...It is also difficult for land valuations to take account of temporary trade in water which constitutes the majority of current trading...These issues could be addressed by removing water rights from land valuation.*

The Act allows for the continuation of current practice over a transitional period during which a long-term solution will be found. Other concerns raised related to the impact on local government ratings. New South Wales has committed to a broader review of the local government ratings base and to considering necessary amendments.

The Council recognises that New South Wales has created freely divisible and tradeable water access rights that are separate from land title. The Council is of the view that New South Wales has met its commitments in this area.

Clear specification of water entitlements and the creation of water 'property rights'

The Council has received submissions from water users on the issue of whether the Act creates water 'property rights'. A perusal of the lengthy Hansard debate on the Bill shows that property rights have been the major area of debate in the passage of the Act.

Security and clarity of water rights are paramount to irrigators and other users, particularly since New South Wales is at the limit of its available water resources. With the Murray-Darling Basin cap in place on all inland valleys, and licence embargoes on most of the coast, there is considerable uncertainty over future access to water. As a result there is a need to clarify and strengthen entitlements.

The NSWIC is seeking a clear definition of water property rights for certainty of ownership. The NSWIC considers the Act fails to meet water reform commitments in that it does not specify clear 'water property rights'. They argue that nowhere in the Act is the right known as a 'water access right' defined. Similarly, they are concerned that entitlements are not defined with respect to volume and reliability, and are subject to many discretions.

The NSWIC paper on property rights proposes a test for water property rights based on the characteristics of duration, flexibility, exclusivity, quality of title, transferability, and divisibility (NSWIC 2000). The paper draws on Canadian research into developing individual transferable fishing quotas as property rights to derive their tests, and also cites the 1995 ARMCANZ national property rights guidelines for water.

New South Wales acknowledged some of these concerns in the Second Reading Speech:

> *We cannot deliver property rights in the form expected by some water users, but these rights will be as secure and reliable as any natural resource right can be other than land.*

The Act creates a hierarchy of rights to guide allocation decisions with the environment coming first, basic land-holder rights coming next, and then the various categories of licence holders having their priority and security clearly stated.

New South Wales considers that the Act provides the highest level of statutory security for water access licences in Australia. However, New South Wales also recognises that the new system is not entirely what everyone wants and that there are concerns with the beginning of the process and what happens after ten years.

Duration and renewal of access licences

The term and review of access licences were heavily debated during the passage of the Act. Various terms were proposed for access licences, ranging from no fixed term to the previous term of five years. After further consultation, the New South Wales Government decided that a reasonable term for access licences would be 15 years.

The Act also builds in a priority for licence renewal after the 15-year period. This increases the certainty of rights for water users while allowing for adaptive management through a clear and consultative process for reviewing bulk access rules.

Duration of water management plans

There was considerable debate on the issue of the length of water management plans. The setting of the duration of plans, of course, is a trade-off between adaptive environmental management and security of investment for water users. Hence, the Second Reading Speech in June 2000 argued:

> *We have listened to the view of the New South Wales Irrigators' Council and other water users that 15-year plans are needed to ensure a secure platform for business decisions. We have listened to representations from the Australian Bankers Association along similar lines. But we have also listened carefully to the Nature Conservation Council and other environment groups about the need for plans*

> *to be no more than five years, so that there is still flexibility to respond to the changing needs of the environment.*

After conducting a further round of public consultation and receiving submissions on the draft Bill, the New South Wales Government accepted the view that five years was not a sufficient period for investment certainty. A period of ten years with a compulsory five-year review of plans was decided upon as a suitable planning horizon for surety of investment purposes.

New South Wales recognises the importance of this aspect for water property rights:

> *It is the term of a plan that really helps to define water rights, and the period of ten years provides a much better basis for business confidence and investment.*
>
> *The conditions of water access licences will also be linked to the ten-year water management planning cycle. These amendments are more consistent with the CoAG requirement to specify water rights as clearly as possible. They also provide more certainty for water users.*

Council comment

The Council has closely followed the debate in the New South Wales Parliament and has met with interested parties and groups concerning the proposed arrangements. With the passage of the new Act, there are still some significant issues to resolve such as the degree of certainty that will exist under the transitional arrangements until the initial bulk access regimes are established, the form of the register, and what security a user has after ten years.

During debate on the Bill, the question most often asked was what security do users have after a ten-year water management plan expires? Would a bank be prepared to lend funds to a user in Year eight of a ten-year plan given the lack of security? User groups argued they needed a 15-year term for plans to tie in with the average length of 15 years for rural loans.

The New South Wales Government argued that most loans to medium and large businesses reflect current and medium term debt of one to five years which is well covered by the ten-year plan timeframe. Furthermore, the security in the Act needs to be seen in the context of what licence holders have now, that is, five-year licences which could be cancelled or changed at any time. Banks have been lending money on this basis for a long time.

New South Wales considers that ten-year plans, with compensation at market value for changes to bulk access regimes, is a very significant increase in certainty for both water licence holders and the banks. It is the Council's view that compensation is a means of increasing certainty associated with a property right and that the Act does create a water right subject to compensation, which lasts for ten years.

This supplementary assessment in water reform deals with a residual of outstanding issues jurisdictions needed to address to meet second tranche commitments. In particular, the Council has consistently assessed the progress of jurisdictions in establishing legislative frameworks to provide for water allocation and trading mechanisms. With the passage of the Act establishing water allocations for the environment, water access entitlements, mechanisms for trade and the separation of water from land title, the Council considers that New South Wales has met its general reform obligations for the second tranche.

However, the Council has noted the emergence in the last six months of a national debate on what constitutes a 'water property right' under the CoAG reforms. The Council Secretariat is examining the particulars of the NSWIC six-point test, as well as the ARMCANZ national principles on property rights in water, and recent work commissioned by the High Level Steering Group on Water. The Council is working with officers from the Commonwealth and all State and Territory Governments and is in the process of producing a paper for public release.

A central tenet of this paper is the issue of further refinement of what constitutes an effective water property right and its importance in relation to national trading mechanisms. Water property rights have not been well defined leading to uncertainty, potentially discouraging otherwise desirable investment, and inhibiting trading water to higher value uses. It is the Council's view that rights need to be well specified in the long term sense to ensure water users get the most certainty they can about the nature of the property right, and absolute security on the issue of ownership.

The Council therefore sees the efficacy of water property rights arrangements as a key focus of the third tranche assessment for all jurisdictions. Generally speaking, the Council is looking for property rights to allow efficient trade and investment to be maximised, with adequate provision for adaptive resource management, including mechanisms to ensure adequate environmental protection and the needs of communities.

In conclusion, New South Wales has in place a legislative framework for the determination and trading of water entitlements which recognises consumptive and environmental needs. These water rights are now separate from land title and better defined in terms of allocation and resource management systems under the Act than existed under prior

arrangements. Security of rights is better specified and has increased from five to ten years duration, with priority renewal for existing licence holders on expiration of a licence. For these reasons, the Council considers that New South Wales has now met all requirements for the second tranche assessment. The Council will review the efficacy of these arrangements as part of the third tranche assessment.

Trade

The NSWIC submission states that 'defining the nature and ownership of water property rights is intrinsic in the establishment of sustainable trade'. The Council agrees that trading will not maximise water's contribution to national income (and the value of individual water rights) and welfare if the instrument being traded is poorly defined.

Further, the NSWIC argues that water trading arrangements are not covered in the Act. The Council's view is that the Act creates water access licences that provide for a tradeable water right that should be freely tradeable and divisible. However, it will be the local transfer rules determined in plans that establish the effectiveness of access licences as trading instruments. There are no objectives for water trading identified in the Act such as the key objective of maximising the contribution to national income. However, the Act does permit the Minister to establish and gazette general statewide transfer principles as a guide to committees formulating plans. The Council understands that New South Wales intends to create statewide general trading principles as a priority.

The Council's focus for the second tranche assessment has been on removing legislative impediments to trade. For this reason, the Council's view is that the creation of freely tradeable and divisible water access licences means that New South Wales meets minimum commitments in this area.

The Council will revisit this issue in future assessments when assessing the efficacy of the new arrangements on water property rights. In particular, the Council will be monitoring the establishment of local transfer rules in plans to ensure they do not create unnecessary impediments to trade and any general trading principles established subsequent to the Act.

New South Wales has argued that as long as trades comply with local transfer rules contained in statutory plans, approvals should be considerably streamlined. Water use approvals will define an upper bound of water to be transferred into an area thereby eliminating the need for assessment of each transfer up to the bound. This will streamline the present administrative approvals process which requires individual assessment of each trade.

The Council is looking to ensure that trading arrangements are streamlined in terms of freedom of entry, timeliness, certainty of execution, and efficiency. New South Wales has advised that Ministerial approval will continue to be needed on a case by case basis for water trading. The Council suggests there is scope to develop prior assessment mechanisms for non-sensitive trades and to streamline approval mechanisms for all other trades as much as possible. This would ensure permanent and temporary trades, including interstate and inter-valley transfers, are not subject to lengthy delays. The Council will continue to monitor developments in this area.

Registry

A number of stakeholders wanted a water register to be established – that is, a Torrens Title system similar to the land titles register to guarantee title. The New South Wales Government has taken a different approach. To address the issue of security for investment borrowings, the Act requires that the applicant must obtain the written consent of any registered third party interests before a transfer can be approved. The licence or approval holder or the third party interest can register interests. The New South Wales Government believes this is a reasonable compromise between the banking sector preference for a register which guarantees title and other interests which prefer a minimalist approach. The register is still to be established under regulation.

The NSWIC argues the Act cannot be considered to be 'substantially in force' as the Act relies on regulations which are not passed. New South Wales has advised that the Act is fully effective from 1 January 2001, although some parts of the licensing system will commence after this date. New South Wales anticipates that all parts will commence within 12 months including all necessary regulations. The Council considers this meets the requirement that the Act be 'substantially in force'.

The Council is of the view that the issue of certainty of ownership of rights should be able to be addressed by a well-devised registry. The form of the registry should provide evidence of title. The establishment of the register should therefore be a priority to allow valuers the necessary information concerning certainty of title required to value water property rights. As the separation of water rights from land title has created some unease in the banking sector as to the basis upon which to lend funds leading to the potential for higher premiums, it is important that the register aim for the highest level of title achievable.

Given the registry is still to be established by regulation, the Council will examine the registry arrangements for New South Wales in terms of certainty of ownership as part of its examination of the efficacy of water property arrangements for the third tranche assessment.

For the third tranche assessment, the Council will look for security of ownership so as to promote efficient trade and minimise any additional risk premiums on loans made against water rights that may undermine the benefits arising from the broader reform program. To this end, the Council will look for New South Wales to establish the registry and adopt measures to encourage efficient lending and trade, including cost-effective protocols.

Recommendation

The *Water Management Act 2000* has now been enacted and has implemented some landmark reforms for the water industry. The Act establishes natural resource management provisions including allocations for the environment, fully separates water rights from land title, better clarifies water rights, and establishes in legislation a community partnership in the role of water management committees.

The Council considers that New South Wales has fully met its water reform obligations against the second tranche commitments. The Council will examine the efficacy of water property rights arrangements in its considerations for the third tranche assessment.

Queensland

Reform commitment: Cost reform and pricing

As part of their CoAG commitments governments agreed that, where cost effective, urban water charges should be based on a two-part tariff comprised of an access charge and a charge reflecting the volume of water used. Governments agreed to assess the cost effectiveness of introducing two-part tariffs and, where appropriate, undertake reform by the end of 1998.

Urban water supply in Queensland is predominantly a local government responsibility. In implementing the reform commitments, Queensland has chosen to introduce reform at two levels. Implementation of reform by the State's largest local governments[12] is compulsory and voluntary for all other local councils. However, the Queensland Government encourages reform among the smaller councils through measures such as the NCP Financial Incentive Package, which provides an opportunity for those local

[12] At the time of the second tranche assessment this group (the *Big 17*) comprised the following local governments; Brisbane, Caboolture, Cairns, Caloundra, Gold Coast, Hervey Bay, Ipswich, Logan, Maroochydore, Mackay, Noosa, Pine Rivers, Redlands, Rockhampton, Thuringowa, Toowoomba, and Townsville. On 1 July 1999, Bundaberg City Council was added to this group.

governments applying NCP reforms to share in Queensland's NCP payments.

As noted in the June 2000 supplementary assessment, the Council accepts that a prioritised approach to reform, focusing initially on the largest service providers, is often consistent with maximising the immediate gains from reform. However, the Council has long expressed the view that broad application of the water reform framework developed and agreed by all jurisdictions promises significant gains to communities and the environment, and that it is each government's responsibility to ensure broad adoption of reform in its jurisdiction.

The June 1999 second tranche assessment found that Queensland had not achieved sufficient progress, even among its largest water businesses, to meet second tranche commitments. However, given that progress had been made and further progress was anticipated, the Council did not recommend a reduction in competition payments. Rather, it considered that remaining matters should be considered through supplementary assessments.

Queensland provided significant additional information for the December 1999 supplementary assessment, including a report by the Queensland Competition Authority (QCA 1999) on the progress of implementing the reforms by local government, and findings by Australian Economic Consultants (AEC 1999a and 1999b) that two-part tariffs were cost effective for Townsville and Thuringowa, and that a joint review of the united water business of both Councils should be undertaken. Despite the additional information, the Council was concerned that the AEC recommendations which demonstrated a net benefit from implementing the reforms had not been acted upon. The Council also remained concerned at the slow progress by local governments outside the *Big 18* (including Cooloola and Johnstone Shire Councils). The Council did not recommend a reduction in payments for this assessment. Instead, it identified a list of key deliverables which it considered must be met by June 2000 if Queensland was not to face a reduction in NCP payments.

In the June 2000 supplementary assessment, the Council commended Thuringowa City Council's decision to act on the positive finding of earlier cost effectiveness studies. However, the Council expressed significant concern at the decision by Townsville (which has around 29 700 connections) not to revisit the issue of two-part tariffs before 2002.[13] In particular, the Council stated that:

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[13] Under the *Local Government Act 1993*, local governments not introducing two part tariffs are required to revisit this matter within three years of their first report, that is, March 2002 for the Townsville City Council.

> *The Council notes that Townsville City Council's current position means that it will not take a definite decision on whether two-part tariffs will be implemented (let alone achieve actual implementation if appropriate) before 2002. This is significantly beyond the 1998 deadline agreed by Queensland when it endorsed the CoAG water reform framework in 1994 and became a signatory to the NCP in 1995. The Townsville City Council's current position also means that it will be the only local government among the big 18 still to finalise its position in relation to two-part tariffs (NCC 2000b, p. 79).*

The QCA Report also found that Townsville's current pricing arrangements were resulting in significant cross-subsidies and relatively few people facing volumetric charges.

This was the third Council assessment where progress was found to be unacceptable. The additional absence of an undertaking by Cooloola and Johnstone Shire Councils, which have around 8260 and 6993 connections respectively, to review large free water allowances added to the Council's concerns.

Given the above, the Council recommended that five per cent of Queensland's NCP payments for the year 2000-01 be suspended until December 2000, at which time the Council expected Townsville to have agreed to bring forward its review of two-part tariffs to before 1 July 2001. The Council considered that commitments by Cooloola and Johnstone for more timely implementation were also important considerations for this supplementary assessment. Should an acceptable path forward not be identified the Council stated that it would recommend that the suspended payments be withheld permanently.

Developments since June 2000

On 20 December 2000, the Queensland Treasurer advised the Council that Townsville City Council had resolved to complete a second review of two-part tariffs by 30 June 2001. The Queensland Treasurer's letter stated that the decision by Townsville to bring forward the completion of a second two-part tariff assessment represents a significant step forward in increasing the application of two-part tariffs in Queensland.

In relation to the two smaller local governments, Queensland advised that:

- Cooloola Shire Council had resolved to consider the implementation of two-part tariffs and full cost pricing by 30 June 2001; and
- Johnstone Shire Council had advised that it would not amend its current water pricing scheme.

Assessment

In the Council's view, introducing two-part tariffs can deliver significant gains to communities, businesses and the environment. Where their introduction is cost effective, two-part tariffs give water users more control over their water bills, encourage measures to use water wisely, decrease cross-subsidies and can lead to deferral of major investments such as new dam developments.

The Council notes that the pricing regimes currently used by Townsville, Cooloola and Johnstone all include an access and volumetric component, the key components of a two-part tariff. However, the availability of large free water allowances in these local governments potentially undermines the capacity of current pricing structures to encourage more efficient and sustainable water use.

Given the above, the Council welcomes the decisions by Townsville and Cooloola to bring forward their reviews of the cost effectiveness of two-part tariffs. The Council anticipates that these reviews will be undertaken in a transparent and rigorous manner. It will look for a response by each local government to the findings of the review, which may include a commitment to the early introduction of two-part tariff reform.

In relation to Johnstone, the Council has been provided with correspondence in which the Shire Council reaffirms its commitment to current charging arrangements. This is of concern to the Council given:

- a review recommendation that two-part tariffs (excluding a free water allowance) be introduced;
- the presence of a substantial free water allowance in the current scheme potentially means that few customers face a volumetric charge and many may face an incentive to use more water than they would otherwise given that the free water allowance; and
- the current system provides scope for non-transparent cross-subsidies.

These developments indicate that Johnstone's current arrangements are not consistent with CoAG commitments. The Council will revisit this matter in the third tranche assessment as part of its broader assessment of pricing reform by all Queensland urban water providers.

Recommendation

While the Council is disappointed by the Johnstone Shire Council's reluctance to further consider reform that has delivered significant benefits to rate payers in other districts, the commitments by Townsville and Cooloola to timely reviews demonstrates substantial progress. Therefore, the Council recommends that the suspension of five per cent of NCP payments be lifted and suspended payments be reimbursed. Actual

progress against the commitments made by Townsville and Cooloola, and a reassessment of the stance of Johnstone, will be significant issues for the third tranche assessment.

Reform commitment: Institutional reform

Consistent with the CoAG Framework, the Council's second tranche assessment looked for governments to, as a minimum, separate service provision from the roles of standard setting, enforcement and resource management. In relation to Queensland, the Council concluded that:

> '*...viewed as a whole, the Queensland water industry presently falls well short of the strategic framework requirements to separate service providers from regulatory, standard setting and resource management functions' (NCC 1999a, p. 485).*

However, the Council also noted that progress towards overhauling existing arrangements had been achieved and that further reforms were planned. Thus, the Council agreed to revisit this issue in a supplementary assessment in December 1999 at which time it would look for progress on the following aspects of reform:

- amendments to the QCA Act to provide for the oversight of prices charged by local government water and wastewater providers;
- significant progress on the review and implementation of new institutional arrangements for State Water Projects (SWP); and
- significant legislative or administrative progress on the implementation of licensing or other standard setting mechanisms.

In December 1999, Queensland provided evidence of further progress on each of the above matters although substantial additional work was required before second tranche commitments would be met in full.[14] Given the evidence of Queensland's commitment to resolve the above matters, the Council again decided to consider progress through a supplementary assessment (NCC 1999b).

In June 2000, the Council was advised that amendments to the *QCA Act 1997* had been passed, the South East Queensland Water Corporation had

[14] This evidence included copies of the Queensland Competition Authority Amendment Bill 1999, a discussion paper canvassing options for the reform of SWP and drafting notes on legislation to refine regulatory and governance arrangements.

been declared a monopoly business, and that a number of other bulk water providers would be investigated for declaration.[15]

Queensland also advised that SWP would be corporatised and the Department of Natural Resources (DNR) would be restructured by mid-July 2000 to focus more on policy planning and broad audit functions rather than its traditional infrastructure provision role. The restructure was to include a movement away from the project assessment and developing funding role functions previously held by the Department's Regional Infrastructure Development Group.

The *Water Act 2000* which provides the legislative foundation for the State's new institutional arrangements and facilitates the corporatisation of SWP, was tabled in the Legislative Assembly on 22 June 2000. However, given the legislation was not in place at the time of the June 2000 supplementary assessment, the Council could not be satisfied that second tranche commitments had been met. Given that the original deadline for this commitment contained in the CoAG Framework had long passed, the Council considered that should legislation not be substantially in force by 31 December 2000 that this would have implications for five per cent of the State's NCP payments for the year 2000-01.

Developments since June 2000

Prices oversight

On 14 September 2000, the Gladstone Water Board was declared for monopoly prices oversight and referred to the QCA for an investigation into its pricing arrangements.

The Council has also been advised that SWP and Mount Isa Water Board are being investigated by the QCA to determine whether they met the criteria for a monopoly business activity, with a report due by the end of December. A decision regarding declaration is expected in early 2001.

Water businesses operated by the State's *Big 18* local governments are also being considered for declaration with a decision to be made following consultation with each local government by February 2001.

[15] Declared businesses can be referred to the QCA for prices oversight.

Corporatisation of State Water Projects

Corporatisation charter

Queensland has provided the Council with a final version of the SWP Corporatisation Charter. The Charter provides a broad plan for how SWP will be corporatised to meet the key corporatisation principles of clarity of objectives, management autonomy and authority, strict accountability for performance and competitive neutrality.

The Charter indicates that the corporatised SWP (now Sun Water) will operate as 'Sun-Water Corporation'. Its mission statement is to:

> *'Enhance shareholder value through the provision of commercial water services that are valued by customers' (Queensland Treasury 2000, p.2)*

The Charter also provides information in relation to SWP:

- *core business* – defined as bulk water storage and distribution; retail reticulation and drainage; and water infrastructure development;
- *corporate governance* – SWP will be established as a statutory government owned corporation under the direction of a five to seven member board. SWP is required to report to the shareholding Ministers on the performance of each business division and subsidiary;
- *pricing and community service obligations* – SWP will have the autonomy to set prices subject to price paths set by the government or directives from shareholder Ministers. The QCA will investigate whether any of SWP's activities meet the criteria for a government monopoly business (as a first step towards potential declaration for independent prices oversight) within six months of corporatisation. Prices for services to local government are to be negotiated consistent with the following principles:
  - prices are to be based on efficient costs of service delivery recognising the balance between service standards and prices;
  - prices are to reflect a commercial rate of return on assets, valued according to optimised written down replacement cost;
  - revenues received from Local Government in schemes where assets are shared are not to cross-subsidise non-urban users;
  - prices are to recognise the existence of contributed assets such that there is no double counting of the asset returns;

- in keeping with pricing for irrigation, arrangements to transition existing contracts into fully commercial pricing including a return on capital are to take no more than five years;

- the Board must seek the approval of Shareholding Ministers to extend the transition period beyond five years, including continuing CSOs for supply to Local Government due to hardship; and

- CSOs are to be provided consistent with the Queensland Government's 1999 CSO policy framework. Good corporate citizen expenditure should be disclosed in aggregate and individually for any item exceeding $50 000.

- *financial issues* – guidelines for new investments are to be prepared within six months of corporatisation. A commercial return consistent with the project specific weighted average cost of capital will be required on all new infrastructure. Projects greater than $5 million require shareholding Minister's approval either as part of the Statement of Corporate Intent process (SCI) or separately. SCIs are also to include information on agreed performance indicators, while corporate plans will require five year projections of accounting statements, tax and dividend information and key assumptions; and

- *policy and legislative requirements of corporatisation* – SWP will be subject to the provisions of the *Water Act 2000* including those relating to service provision, water authorities (discussed above) and transitional provisions for resource operating licences and entitlements. SWP will be exempt from the Freedom of Information Act but is subject to judicial review, criminal justice legislation, review by the QCA, and government policies such as the *Code of Practice for Government Owned Corporations' Financial Arrangements (1999).*

In regard to local management of irrigation schemes, SWP will be required to establish customer councils to cover all schemes within six months of corporatisation. Customer councils are to be established on a regional basis and should be given the opportunity to provide input into SWP's decision-making processes on an advisory basis, on a range of strategic matters including:

- business planning;
- negotiation of customer service contracts;
- customer service and asset performance standards and asset management plans;
- the prioritisation of SWP's asset investment and refurbishment programs for various schemes;

- developing communication strategies and participating in communication between SWP and customers; and
- other customer service issues that come to the customer council's attention.

SWP customers will be given the opportunity to consider local management options during the nine month period following corporatisation under conditions specified by the Queensland Government and again in the fourth and fifth year following corporatisation.

Other information

The Council has been advised that a corporate plan and SCI for SWP have been prepared and are currently being considered by the shareholder Ministers prior to finalisation. A seven member Board of Directors was appointed on 1 October 2000.

Water Act 2000

Following an 18 month consultation process, the *Water Act 2000* was enacted on 13 September 2000 and most provisions commenced on 1 October 2000. The relevant provisions of the *Water Act 2000* are discussed below.

Chapter 3 infrastructure and service

Chapter 3 of the Act aims to:

- provide for a regulatory framework for water and sewerage services in Queensland;
- provide for the functions and powers of service providers;
- protect the interests of customers and service providers;
- provide for the regulation of referable dams; and
- provide for flood mitigation responsibilities.

This part of the Act establishes a registration rather than a licensing system whereby all service providers must apply to the regulator (the Chief Executive of the DNR) for registration. The regulator is to maintain the register. Service providers must ensure that the information on the register remains current including through annual review and notification of significant changes such as transfer of infrastructure and ceasing operations as they occur.

All registered service providers must prepare strategic asset management plans for ensuring continuity of each registered service. Plans must,

among other things, identify standards for appropriate levels of service and performance indicators as well as an operation, maintenance and renewals strategy for achieving these standards. They must be developed[16], certified by a registered engineer, and approved by the regulator. They must be periodically reviewed. Financial penalties apply for failure to develop or abide by asset plans.

Customer service standards should also be developed and provided to customers and regulators within one year of registration to ensure that customers without a service supply contract are protected by standards relating to the supply of registered services. Customer service standards should, among other things, address processes for service connections, billing, metering, accounting, customer consultation complaints and dispute resolution. Complaints regarding service standards can be taken to the regulator where they cannot be resolved with the service provider.

Information should also be provided annually to the regulator on the performance of registered services against asset management plans and customer standards as well as the outcomes of, and actions taken, in accordance with any reviews.

Small service providers[17] may appeal to the regulator for a conditional or unconditional exemption from the above requirements where the costs of compliance are likely to outweigh the benefits. However, these service providers must also notify the regulator of any change in the conditions for which the exemption was given. This may see the regulator amend or cancel an exemption.

Chapter 3 also allows a local government to declare a water service area for retail water services or sewerage services, and to declare a water service provider for the area. Part 4 provides a service provider with an effective monopoly for retail services but requires the service to be provided to all potential retail customers within that area to the 'greatest practicable extent'. The Act extends on previous legislation by explicitly allowing private providers to be designated as service providers.

The Act also provides for local governments to accept trade waste and provides guidance on the matters to be considered in making that decision.

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16 Under the transition provisions of the Act, strategic asset management plans must be developed within two years of commencement for large service providers, three years for medium service providers and four years for small service providers.

17 Retail water and sewerage providers with less than 1000 connections and irrigation services with less than 100 connections or 10 000 Ml throughput.

Chapter 4 water authorities

Chapter 4 provides a corporate governance framework for the establishment and operation of statutory water authorities.[18] The explanatory notes to the *Water Act 2000* note that water authority functions may include:

- water supply;
- water conservation;
- irrigation;
- drainage, including storm water drainage;
- flood prevention;
- flood control;
- underground water supply improvement or replacement;
- sewerage; or
- anything else dealing with water management.

The Act distinguishes between two types of water authorities. Category 1 authorities are essentially bulk water service providers (Gladstone Area Water Board and Mount Isa Water Board) that are subject to commercialisation and cannot charge rates for services provided. For Category 1 authorities, the Minister must prepare a commercialisation charter and these authorities must prepare a corporate plan and annual performance plan for Ministerial approval. Category 1 authorities make a recommendation to the Minister on dividends to be paid. The Minister may also require an interim dividend. Category 2 authorities are subject to a less restrictive regulatory regime which includes the provisions of Chapter 3 of the Act unless an exemption is provided.

Water authorities are controlled by a Board of Directors, who are either elected or appointed in accordance with the establishing regulation.

Assessment

Separating service provision from regulatory roles such as standard setting and resource management offers the potential for improved outcomes for customers, taxpayers and the environment by providing service providers and regulators with greater clarity of purpose and eliminating possible conflicts of interests.

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[18] Generally speaking, water authorities include water boards and drainage boards with a strong but not necessarily exclusive rural focus. The Gladstone Area Water Board and Mount Isa Water Board are also constituted as water authorities.

Queensland is to be commended on the level of progress achieved over the last 18 months in relation to institutional reform. While well beyond the initial timeframe envisaged for this commitment, the State (in consultation with stakeholders) has achieved a major overhaul of its institutional arrangements. In particular, the institutional reform contained in the Act has seen a major restructure in the way the State manages, regulates and provides water and wastewater services. In conducting future assessments, the Council will look to ensure the new arrangements (which are light handed particularly in relation to local government service providers) are implemented and lead to efficient and transparent service provision and regulation that is responsive to the needs of customers.

The Council supports the corporatisation of SWP (now Sun Water) as a basis for encouraging more efficient, effective and commercially focused service provision. The Council also strongly supports the moves made toward independent prices oversight among some large water service providers. While not the only means of meeting the CoAG commitments, the Council suggests that independent prices oversight offers an avenue for achieving more open, transparent and robust pricing decisions.

The June 2000 assessment drew attention to the differential level of treatment of customer service standards between local government providers on the one hand, and corporatised government and private sector providers on the other. The Council noted that Queensland undertook to review this issue but has received no further information on the status of this review. On this, the Council notes that DNR's Annual Report potentially provides a vehicle for reporting and comparing levels of service and performance of registered public and private service providers.

The June 2000 supplementary assessment also noted that Queensland agreed that the power granted by the *Water Act 2000* to compel persons to connect to services is a significant issue requiring consultation with local governments and may take some time to resolve. These issues will be revisited in the third tranche assessment.

Recommendation

Given the progress achieved since June 2000, the Council is now satisfied that Queensland has met its second tranche commitments in this area. The passage of the *Water Act 2000* represents a significant milestone in meeting CoAG institutional reform commitments. In future assessments, the Council will look to ensure that the new arrangements are implemented and lead to efficient and transparent service provision and regulation that is responsive to the needs of customers.

Reform commitment: Allocations and trading

Information provided by Queensland prior to the second tranche assessment highlighted the limitations of the existing water allocation and management system. These included that:

- there is no power to provide for allocation of water on an environmentally sustainable basis;
- there is no strong basis to consider the cumulative effects of additional licences on the whole basin;
- licences tie water allocation to land and works; and
- there is no process for basin wide environmentally sound water planning.

In response to these concerns, the Queensland Government initiated a major overhaul of the State's allocation and management processes. At the time of the second tranche assessment, progress included significant policy work in designing the new system and initiation of Water Allocation Management Plans (WAMPs). However, much remained to be done before the legislation establishing the new management framework could be put in place. Therefore, given the limitations of existing arrangements and the infancy of legislation to establish an improved system, the Council concluded that Queensland had not met second tranche commitments. However, given the progress achieved, the Council agreed to a supplementary assessment in June 2000.

Draft legislation was prepared in consultation with water users prior to the June 2000 assessment. Prior to finalising this assessment, the Council had the opportunity to review a number of drafts of the Bill. The supplementary assessment concluded that, if passed, the measures contained in the drafts reviewed by the Council were likely to meet second tranche commitments.

The *Water Bill 2000* was tabled in the Queensland Legislative Assembly on 22 June 2000. However, at the time of the June supplementary assessment it had not been passed and the Council could not be satisfied that all second tranche commitments were met. The Council noted the importance of this reform to the agreed framework's overall objective of more efficient and sustainable water use. Consequently, the Council recommended that further time be provided to Queensland but that should appropriate legislation not be substantially in force by 31 December 2000, there would be implications for ten per cent of the State's competition payments for the year 2000-01.

Developments since June 2000

Water Act 2000

The passage of the *Water Act 2000* provides a legislative foundation for more sustainable and efficient use of the State's water resources. The new arrangements are designed to provide a holistic approach to water resource planning allocation and use which acknowledges the needs of the environment as well as other water users. The *Water Act 2000* also separates water rights from land title and provides a basis for more effective water trading in some areas.

As noted above, the *Water Act 2000* was assented on 13 September 2000. A small number of provisions commenced at that time, but the majority of the Act commenced on 1 October 2000. Parts 1 and 2 of Chapter 2 relating to water rights and water resource plans as well as the relevant sections of Chapter 5 relating to transitional arrangements were included among the provisions that commenced on assent. A moratorium on any new development of water resources is now in place including development of sleeper and dozer licences which would affect flows.[19] The Council understands that most of the remaining provisions including the new licensing arrangements (discussed below) will commence from March 2001.

The Second Reading Speech supporting the *Water Act 2000* noted that its passage will represent the first overhaul of the State's water laws for 90 years. It also noted that the preparation of the Act involved 'one of the most comprehensive consultation processes ever undertaken in Queensland', representing the culmination of 18 months of consultation with key stakeholders and the community.

Chapter 2 allocation and sustainable management

Chapter 2 of the *Water Act 2000* aims to 'advance sustainable management and efficient use of water and other resources by establishing a system for the planning, allocation and use of water' (Section 10(1)).

Under Section 10(2), sustainable management is defined as that which allows for the allocation and use of water for the physical, economic and social well being of Queensland and Australia[20] within limits that can be

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19 Generally these are licences that have been issued but the entitlements have not yet been activated.

20 The inclusion of Australia in this clause highlights the national significance of efficient and sustainable water use and the need for a holistic approach to resource management acknowledging any relevant interstate flow on effects.

sustained indefinitely. The *Water Act 2000* also states that sustainable management involves protection of biological diversity and the health of natural ecosystems and should contribute to, among other things:

- improved planning confidence and security of entitlements;
- economic development consistent with the principles of ecologically sustainable development;
- increased community understanding of the need for efficient water use; and
- increased community involvement in water planning and management.

Efficient water use is defined to include consideration of such matters as demand management measures, measures to promote water conservation and recycling, and consideration of whether the volume and quality of water leaving an application or destination is appropriate for the next application or destination (for example, the environment).

The measures provided by the Act in pursuit of the above are illustrated by Figure 1 and discussed below.

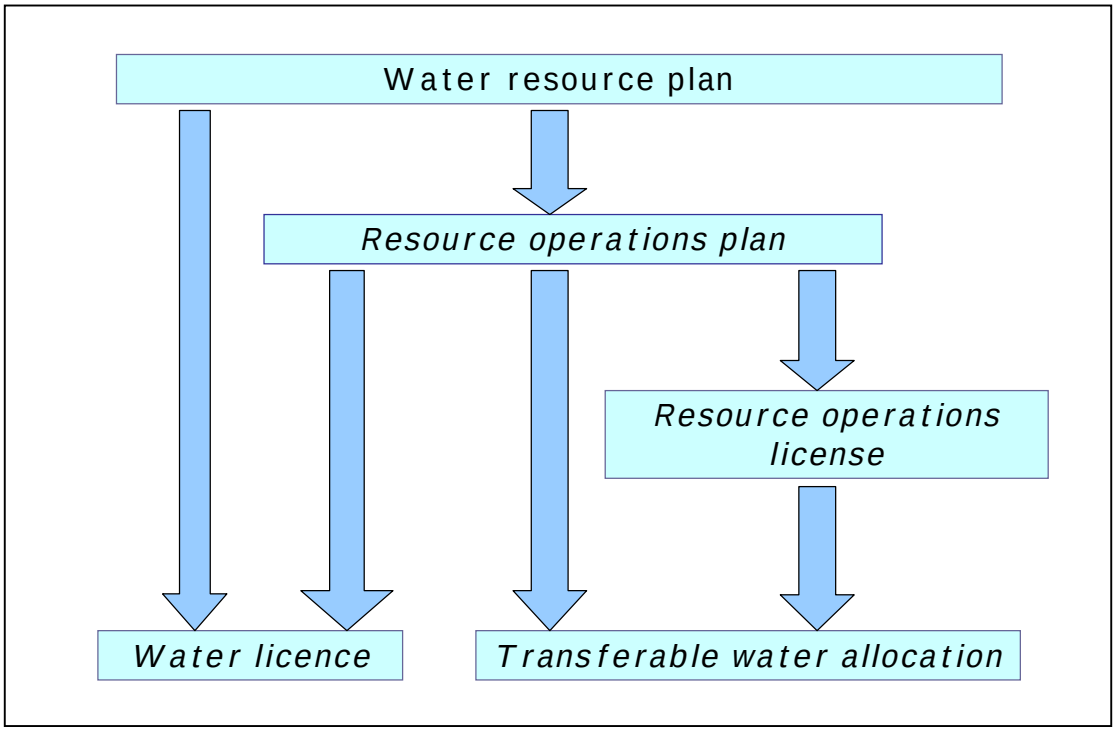

Figure 1: Flow chart of water management system

Source: Queensland Government.

Water rights

The *Water Act 2000* vests the use, flow and control of all water in the State. Water may also be taken without a water licence or allocation (discussed below) by an owner of land adjoining a watercourse lake or spring (riparian rights) for stock and domestic purposes. Water may also be taken without an entitlement in an emergency[21], for camping purposes or to water travelling stock. A person may take or interfere with overland flow unless a moratorium notice or water resource plan limits this activity.

In times of water shortage or emergency (such as a blue green algal bloom) the Minister may limit the taking of water for up to three weeks. In addition, the Act provides the power for the Minister to limit in specific locations by regulation, the right to draw water for domestic use. This was done recognising that suburban or rural residential subdivision (such as strip development along a watercourse or hobby farms) can lead to significant uncontrolled extractions which may have an impact on other water users or the environment. Subdivision participants can apply for a licence or buy a water allocation where riparian rights are limited.

[21] Under the Act, an emergency is intended to include an event such as a bush fire but would not include personal emergencies such as crop failure.

Water resource plans

Section 38 states that the Minister may prepare a Water Resource Plan (WRP) for any part of the State to advance the sustainable management of water. A WRP will have a ten year duration and may be prepared for (but not limited to) the following purposes:

- defining water available for any purpose;
- providing a framework for sustainably managing water;
- identifying priorities and mechanisms for dealing with future water use;
- providing a framework to establish water allocations; and
- providing a framework for reversing, where practicable, degradation in natural ecosystems.

A WRP must regulate the taking of overland flow or subartesian water if the Minister is satisfied that:

- where there is an existing WRP, there is a risk that diversions may significantly impact on the WRP's outcomes; or
- where there is a risk that diversions may significantly affect water availability for existing entitlement holders or water requirements of natural ecosystems.

In very general terms, the WRP process includes:

- the Minister prepares an information report about water issues and technical assessment arrangements;
- the Minister publishes a notice of the intention to prepare a draft WRP;
- the Minister establishes a community reference panel representing cultural, economic and environmental interests in the proposed plan area;
- the Minister publishing a moratorium notice where appropriate;
- preparation and publication of a draft WRP consistent with the provisions of section 46 (which include the purpose of the plan and area covered, objectives and strategies for achieving these objectives as well as monitoring and reporting arrangements) and overview reports[22];

[22] Where the WRP provides for establishing water allocations it must also state environmental flow objectives, water allocation security objectives, performance

- community consultation on the draft WRP;
- preparation and approval of a final WRP (which is subordinate legislation);
- preparation of a report on the consultation process including a summary of issues raised and how the issues were dealt with;
- preparation of reports from time to time as provided for in the WRP with summaries of matters such as research, monitoring, effectiveness, water allocations and non-compliance;
- amendment of the WRP, where appropriate, including where the Minister is satisfied that the environmental flow or water security objectives are no longer appropriate. Any amendments within the life of a WRP may lead to compensation being paid to holders of water rights that are adversely affected; and
- a requirement to prepare a new WRP after ten years.

A WRP is implemented through establishing resource operating plans (ROPs), resource operating licences (ROLs), conversion of existing licences and interim allocations to water allocations and granting of water allocations. The definitions and roles of each of these is discussed further below.

There are two levels of WRP:

- A Water Allocation and Management Plan (WAMP) is the term used to describe the more comprehensive form of a WRP and is used for catchments with high water demand or where there is major infrastructure development; and
- A Water Management Plan (WMP) is used to describe a WRP for areas with relatively low levels of water demand. A WMP does not include the same level of detail as a WAMP and does not provide for tradeable water allocations.

The current status of WRP implementation is shown below in Table 1.

Table 1: Status of Water Resource Plans

Development of WAMPs	Border Rivers Bundaberg Groundwater Burdekin Groundwater

indicators for each of the previous matters, and priority areas for the conversion or granting of water allocations. Section 47 identifies the matters that must be taken into account by the Minister in drafting a WRP.

	Burdekin Mary River Pioneer Logan Barron
Release Draft WAMP	Burnett (June 2000) Condamine/Balonne (June 2000)
Final WAMP	Fitzroy Basin (December 1999) Burnett (December 2000)
Release Draft WMP	Moonie River (May 2000) Warrego/Paroo/Bulloo/Nebine Rivers (June 2000)
Final WMP	Cooper Creek (February 2000) Boyne (December 2000)

Source: Queensland Government.

Resource operations plans

A ROP details how the objectives of a WRP will be met. A ROP must be prepared in consultation with interested parties (including local government). A draft ROP must identify:

- the WRP to which it relates;
- the area and infrastructure covered;
- how the Chief Executive will sustainably manage the water to which the ROP will apply;[23]
- water and natural resource monitoring systems; and
- how the ROP will address the WRP outcomes.

The ROP *may* also include environmental management rules, arrangements for dealing with unallocated water, details of any changes to water entitlements and arrangements for implementation of the plan over a period of up to five years.

Where a ROP provides for allocations, it must identify rules for converting existing licences, environmental management, water sharing, entitlement transfer and seasonal water assignment. In relation to water trading, the ROP may limit trade between different purposes and locations. The final ROP and any amendments are approved by the Governor in Council.

[23] This role is currently fulfilled by the CEO of the Department of Natural Resources (DNR) with support from the Department.

Resource operations licence

A ROL is issued to an infrastructure operator once a ROP is finalised. Most (but not necessarily all) of the operating conditions will be specified in the ROP. ROL conditions include operating and supply requirements and may include monitoring and reporting. It may also prohibit changing, replacing or operating any water infrastructure that is incompatible with environmental flow or water allocation security objectives. An interim ROL can be granted for existing or proposed water infrastructure.

Water allocations

Water allocations provide the holder with an entitlement to a share of the available resource identified by a WRP. Processes for converting existing licences and issuing new allocations should additional water become available are specified in the relevant ROP. Allocations commence upon finalisation of the ROP and specify a volume of allocation and a reliability.

Prior to the passage of the Act, water licences provided both a water allocation and an approval for works development. However, under the new arrangements the Act does not licence works such as pumps and bores. Rather, allocations authorise the taking of water with works authorised separately by local government under the *Integrated Planning Act 1997*.

Water allocations register

Under the Act, all allocations (and transfers) must be recorded on an allocations register. An entry on the register must record the following:

- details of who holds the allocation and how it is held;
- the volume of water for the allocation;
- the location from which the water is to be taken;
- the purpose (for example, agricultural, industrial, urban) for which the water is to be taken;
- the ROP under which the allocation is to be managed; and
- other matters prescribed under regulation.

Where the allocation is managed under a ROL, the register must also note the ROL licence number and the priority group to which the allocation belongs. Where the allocation is not managed under a ROL, the register must note the maximum rate for taking water and the flow conditions under which water may be taken.

Section 150 of the Act provides that an instrument does not transfer or create an interest at law until it is listed on the register. However, as noted by the explanatory notes, the possibility of interests off the register being recognised in equity is not excluded by section 150 and the priorities of such interests would be as established by the courts.

Licenses and permits

The Act provides for a carry-over of many of the existing processes under the *Water Resources Act 1989*, including water licences issued for the taking of water and interfering with water flow. Water licences in Queensland will gradually be replaced as WAMPs and ROPs are completed. An upgraded water licence system will continue in areas with a WMP and there may be some unregulated areas within a WAMP area where ROPs will not be prepared initially, and as a result, water licences will continue.

Matters to be considered by the Chief Executive in deciding on whether to grant an application for issuing a licence include:

- the application and any additional information requested by the Chief Executive;
- any relevant WRP and ROP;
- any submissions made where a notice of the application has been published;
- existing water entitlements and authorities to take or interfere with water;
- information about the likely effects on the environment and physical integrity of watercourses, lakes, springs or aquifers;
- policies developed in consultation with local communities for sustainable management of local water;
- sustainable resource management strategies; and
- the public interest.

A water licence is issued (with or without conditions) for a set period and specifies the water resource and the location from which water may be drawn. In certain circumstances, licences may still be linked to the land. The Act also provides for licences to be amended, renewed, reinstated, amalgamated, subdivided, surrendered or cancelled. Water licences currently have terms for extraction attached. However, these are not defined by volume. In implementing a ROP, all water licences will convert to a volumetric limit.

Water permits are granted for the taking of water for activities such as road construction or mineral and petroleum exploration that have a reasonably foreseeable conclusion date. Water permits, relating to a specific location, are issued for a fixed time and activity and cannot be transferred, amended, renewed or suspended.

Trading

Where rules for transferring, leasing or changing allocations are provided by a ROP:

- applications should be made to the ROL holder where the water is managed under a ROL; and
- applications should be made to the CEO of DNR where the water is not managed under a ROL.

In areas where the ROP does not provide transfer or leasing rules, an application may be made to the CEO of DNR who must issue a public notice that the application has been made. In considering whether to approve the application, the CEO must take into account environmental flow and allocation security objectives, the public interest and potential adverse effects on entitlement holders, ROL holders and natural ecosystems. No limit is set on the time taken by the CEO to make a decision.

Regulations may provide for transfers of water licences. Otherwise water licences may not generally be transferred other than on transfer of land title. Water permits are issued for a specific purpose and are not transferable.

The Act also makes provision for seasonal assignments in which all or part of the water provided by an allocation or licence can be leased to another party for a water year.

Appeal provisions

The Council understands that decisions in relation to an application for a ROL, allocation or licence can be appealed. However, where a decision relates to a ROP, an appeal can only be made to the extent that the decision is inconsistent with the ROP or that a different decision could have been made consistent with the ROP.

The first stage in any appeal is an application for internal review, which must be made within thirty days of the person being provided advice of the decision. If the decision is not that sought by the applicant, the review notice must also state the reasons for the review decision. The applicant may then lodge an appeal with the Land Court.

Compensation

Section 986 of the Act provides that an owner of a water allocation is entitled to compensation if a change reduces the value of the allocation and the change is made within the duration of a WRP, that is, ten years. Changes made at the end of the life of the WRP are not subject to compensation although regular reporting has the potential to ensure that water users are able to form a reasonable expectation about whether significant change at the end of the WRP is likely.

Other information

The Council has received submissions in relation to a number of aspects of the new legislation. In a joint submission, the Queensland Conservation Council (QCC) and World Wide Fund for Nature (WWF) raised concerns regarding a number of outstanding second tranche issues.[24]

In addition, a submission by the Queensland Irrigation Council (QIC) has expressed concern that the security and tenure of water rights created under the Act are insufficient to allow effective planning. QIC also believes that the resource planning process is not adequately resourced to create the certainty and confidence farming businesses require. The relevant matters raised in each of these submissions are discussed further below.

Assessment

Provision for the environment

The Council's June 2000 assessment noted that the new arrangements represent a 'dramatic improvement' on the past. This is because they provide an opportunity for planning that has regard to the environment's needs, better specifies users' rights, has regard to intergovernmental agreements on the environment and downstream users, and includes substantial community consultation.

The *Water Act 2000* provides for a multi-level planning system where the level of management will vary across water resources in accordance with government and community priorities and environmental needs. The Council notes that flexible resource management systems can match the level of management to the circumstances faced by the system and can focus management efforts where they are most needed. In conducting future assessments, the Council will look for evidence that the new system provided by the Act is applied in a manner consistent with CoAG

[24] Matters pertinent to the Council's third tranche assessment were also raised in the QCC/WWF submission.

commitments in relation to environmental provisions, particularly where resources are being placed under heavy or increasing demand.

The QCC/WWF submission notes the requirement under the Act for draft WRPs to be based on the best scientific information available. However the QCC/WFF submission also expresses concern at the absence of a clear mechanism in the Act for ensuring that this occurs.[25] In the Council's view the absence of an explicit process defining how scientific information should be identified and integrated into the process is not inconsistent with CoAG commitments and that a degree of flexibility in how this occurs may be appropriate. However, where legislation provides greater flexibility the Council will look to ensure in future assessments that this flexibility is applied consistent with the objectives of the Act and CoAG commitments.

The QCC/WWF submission notes that application of the principle of sustainable development as defined by the Act should ensure that degradation of ecosystems does not occur. However, the submission notes that WRPs such as the Fitzroy WAMP and draft WRPs for the Condamine-Balonne, Burnett, Boyne and Moonie Basins are not consistent with this principle.

The Council notes that the intent of this supplementary assessment is to resolve outstanding second tranche issues. As noted in the June 2000 supplementary assessment:

> *In a supplementary assessment the Council can only assess those matters specifically identified in the second tranche report as being subject to supplementary assessments. The Council is unable to assess ongoing developments that occur after the second tranche assessment until 1 July 2001' (NCC 2000, p.98).*

Consequently, the Council has focused on whether Queensland has established an appropriate legislative framework for water management, allocation and use rather than the implementation of that framework through WRPs, ROPs, etc. The Council has not considered the efficacy of individual plans but will review all available WRPs and ROPs and consider their consistency with the objectives of the Act and CoAG commitments as part of the third tranche assessment.

Transitional arrangements provided by the Act also exempt WRPs that have already been initiated from such requirements as the preparation of

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[25] The QCC/WWF submission notes their support for the current use of independent Technical Advisory Panels for achieving this.

information reports and appointing community reference panels. These plans (with the exception of the Fitzroy Basin WAMP and Cooper Creek WMP[26]) must comply with Section 46 which list the elements of a draft WRP. The QCC/WWF submission states that this will require significant change and expresses concern that the Government does not intend to consult on these changes.

The Council's June 2000 assessment noted that draft plans would be reviewed following the passage of the new legislation so that they conform to the objectives of the legislation. In conducting the third tranche assessment, the Council will look to ensure that all WRPs (including the Fitzroy Basin and Cooper Creek WRPs) are consistent with CoAG commitments and the objectives of the Act. This will include that WRPs initiated under the *Water Resource Act 1989*:

- have been reviewed to ensure consistency with the Act's objectives and CoAG commitments;
- are consistent with Section 46;
- have given due consideration to the matters listed in section 47 (matters to be considered by the Minister when preparing a draft WRP);
- have any necessary amendments made or scheduled; and
- have involved appropriate consultation.

The QCC/WWF submission draws attention to the fact that the Act accommodates the operation and powers of the *State Development and Public Works Act 1971*. The QCC/WWF state that this provides 'an escape clause for the Queensland Government to undertaking major new developments that could have significant environmental impacts regardless of the provisions of the Act'.

The Council's June 2000 assessment noted that the powers created under Section 89 of the *State Development and Public Works Act 1971* must be exercised in a manner consistent with a moratorium notice or WRP or, in other circumstances, have regard to specified principles. Queensland officials also advised that DNR must be consulted on proposed taking of water pursuant to Section 89, and that where agreement cannot be reached the matter must be referred to Cabinet for decision. The Council was therefore satisfied that there are sufficient safeguards in place such that, in principle, the above provision is not inconsistent with second tranche commitments. The Council will monitor any application of Section

[26] The Act recognises the 1999 Fitzroy Basin WAMP and 2000 Cooper Creek WMP as WRPs under the Act.

89 in future assessments for compliance with CoAG commitments. The Council will also revisit measures for ensuring the ecological sustainability of new rural infrastructure as part of the third tranche assessment.

In summary, the new planning and allocation mechanisms contained in the Act represent a significant improvement on past arrangements in that they provide a foundation for open and transparent identification of, and provision for, environmental needs. The Council is satisfied that second tranche commitments in regard to provisions for the environment have been met. The Council will revisit this issue in the third tranche assessment to check that the implementation of the regime established by the Act is leading to outcomes consistent with CoAG commitments.

Clear specification of water rights

Efficient water use, trade and investment requires that actual and potential water users are able to form a reasonable expectation of the present value of the future stream of benefits that a water right is likely to deliver. A critical factor in achieving this is the clear specification of benefits that the right is likely to deliver to the holder. This is reflected in clause 4(a) of the CoAG Framework which requires that rights be well defined in terms of ownership, volume and reliability and, if appropriate, quality.

In Queensland, water allocations will be specified in volumetric terms with reliability stated in the relevant ROP. Information contained in WRPs, ROPs and in subsequent annual reports will also assist water users to form an expectation of the benefits their rights will deliver over time.

The Council also notes that, under the Act, a publicly accessible register of water allocations will be established to record information on ownership, volume, and encumbrances. The register will list all reported claims against the water right but will not preclude the existence of unlisted legal claims. The Council notes that the Australian Bankers Association was involved in negotiations and has endorsed the approach taken by Queensland.

Over the last six months the Council has noted the emergence of a national debate on what constitutes a 'water property right' under the CoAG reforms. This will be a significant issue for the Council's third tranche assessment. The Council Secretariat is examining the ARMCANZ national principles on property rights in water, and recent work commissioned by the High Level Steering Group on Water. The Council is working with officers from the Commonwealth and all State and Territory Governments and is preparing a paper for public release on this issue.

A central tenet of this paper is the issue of further refinement of what constitutes an effective water property right and its importance in relation to national trading mechanisms. Water property rights have historically not been well defined leading to uncertainty, potentially discouraging otherwise desirable investment, and inhibiting trading water to higher value uses. It is the Council's view that rights need to be well specified in the long term sense to ensure water users get the most security they can about the nature of the property right, and absolute security of ownership.

The Council will therefore be assessing the efficacy of water property rights arrangements as a key focus of the NCC's third tranche assessment for all jurisdictions. Generally speaking, the Council is looking for property rights that maximise the efficiency of trade and investment, with adequate provision for adaptive resource management, including mechanisms to ensure adequate environmental protection, and the needs of communities.

Duration and security of water rights

The duration and security of water rights is also an important consideration in water use and investment. The longer and more secure the right, the higher its value, and the lower the risk on water related investments.

Unlike water licences, no end date is placed on water allocations and any changes to allocations within the ten-year life of the WRP are subject to compensation. Queensland notes that water licences will now be more secure as they are issued within a formal, basin wide planning regime.[27] However, the QIC submission criticises the potential for uncompensated changes to entitlements following the ten-year review of each WRP and the absence of appropriate appeal mechanisms for any changes arising from these reviews.

The Council notes that, in addition to providing planning certainty to users to encourage efficient use, allocations must also be sustainable if users are to continue to enjoy the benefits provided by the resource into the future. Further, even though allocations should be based on the best scientific information available, over time additional information and innovation may suggest that change is necessary. Thus, allocations must be managed as part of an adaptive resource management system. On this, CoAG commitments require that reviews of allocations be undertaken every five years. The QCC/WWF submission states that the ten-year life of WRPs is not consistent with this commitment. The Council notes that annual WRP performance reports will be prepared and that WRPs are

[27] This will militate against dilution of existing rights as a result of governments issuing new entitlements on an ad hoc basin.

subject to ongoing review and may be amended at any time (albeit subject to compensation).

In discussions with the Council, Queensland stated that it has aimed to replicate the features of a long-term right taking account of the fact there is still no perfect science to exactly define the split between consumptive and environmental use. Queensland also stated that the Act is clear about the manner in which entitlements will be reviewed, and provides an effective mechanism for ensuring that amendments to the rights of water entitlement holders for environmental purposes are transparent and follow due process. In addition, the Council notes that WRPs provide for regular reporting on performance and thus planning should be assisted by advanced warning of any likely changes to entitlements.

The Council considers that the arrangements established by the Act provide a potential means for achieving an effective balance between water users' need for security and the environment's need for adaptive management. In future assessments, the Council will look for evidence of the effectiveness of the WRP process including that amendments to existing WRPs are periodically considered. Careful consideration would need to be given to the implications of any change, but where a need for change is identified the Council will look for a response consistent with the significance of the issue. This should include changes within the ten-year life of WRPs and compensation (as required under the Act) where the identified change is significant.

Separation of water rights from land title

With the passage of the Act, water property rights can now be separated from land title through the introduction of tradeable allocations. This means that in areas where allocations are introduced water users will be able to buy and sell water independent of land. The separation of land title and water rights in these areas will give water users more flexibility and increased returns by giving them the option of selling, leasing or applying the water right. It should also improve the availability of water for higher value uses.

For areas where tradeable water allocations are not being introduced, the Council is concerned that the Act retains a link between water rights and land title for water licences. As noted above, a licence can only be transferred to another piece of land where explicitly provided for in regulation and following the approval of the CEO of DNR.

Queensland has advised that the WRPs that lead to the establishment of tradeable water allocations (formerly known as WAMPs) are to be developed for all systems where there is significant demand for water and relatively high existing levels of water use. For areas of lower demand and/or use and where there is a lower level of scientific understanding of

the systems, WRPs will not provide for the establishment of transferable water allocations (formerly known as WMPs).

Queensland has also advised that the Act allows for WRPs to be upgraded in the future in order to allow for the establishment of transferable water allocations if there is sufficient demand and there is adequate scientific knowledge. There will, however, remain some areas of Queensland (for example, the Gulf region) where WRPs will not be developed until such time as there is sufficient demand to warrant a planning process.

Queensland has also informed the Council that when the current program of developing and implementing WRPs is completed across the State, transferable water allocations will cover approximately 80 per cent of all stream flows diverted for irrigation, urban or industrial purposes. This coverage may increase over time as other WRPs are upgraded to provide for transferability and to address issues of increasing water demand and improved scientific knowledge.

In addition, while not ideal, retention of existing licensing arrangements provides a form of transitional measure for resource management prior to the establishment of WAMPs. The existing arrangements also provide an avenue for ongoing management in areas where resource scarcity is low and where there is insufficient scientific knowledge to establish appropriate trading rules to manage environmental impacts.

The Council is concerned that a link between water rights and land title will be retained for a significant proportion of water resources. However, the Council sees Queensland's approach as prioritising reform, with available management resources being focused initially on the areas of greatest need. Further, given that licences are to be replaced with tradeable allocations in instances where there is sufficient demand and scientific understanding to facilitate trading, the link between land and water rights in existing water licences is not likely to be a significant barrier to trade if the proposed arrangements are implemented in an effective and timely way. That said, as any link between land and water rights is not technically consistent with CoAG commitments, the Council will revisit this issue in the third tranche assessment to ensure that the use of water licences in practice does not undermine the objectives of the CoAG Framework.

Trade

As discussed above water allocations are tradeable but water licences remained tied to land title. There are no constraints on who can own an allocation. Trading rules for water allocations are to be developed basin by basin through relevant ROPs. The third tranche assessment will review available trading rules. At this time, the Council will look for the available rules to maximise efficient trade with any limits on trade being

derived from a genuine physical, social or ecological constraint on the catchment.

The Council is now satisfied that Queensland has established a legislative framework that promotes efficient trade in water property rights consistent with second tranche commitments. The Council will review the manner in which the new legislation is applied to ensure consistency with the objectives of the Act and CoAG commitments in the third tranche assessment.

Recommendation

The passage of the *Water Act 2000* represents a major milestone in the establishment of efficient and sustainable water planning, allocation and trade in Queensland. The Council commends Queensland on the progress achieved over the last 18 months.

The Council has reviewed the finalised legislation and is now satisfied that all second tranche commitments in relation to allocations and trade have been met. The Council will review the efficacy with which the new legislation is applied in the third tranche assessment.

Western Australia

Reform commitment: Allocations and trading

In the second tranche assessment for water reform, the Council has looked for jurisdictions to have in place the legislative and institutional framework to enable determination of comprehensive water entitlements, including provision for water for the environment and the establishment of legislative frameworks for water trading.

In the June 2000 assessment, the Council found that the *Rights in Water and Irrigation Act 1914* (RIWI Amendment Bill*)* to establish a new system of water licensing, establish a water allocation and trading framework, and provisions for water for the environment had not been passed and that Western Australia needed more time.

The Council therefore recommended a further supplementary assessment be undertaken by 31 December 2000 to ensure the amending legislation was substantially in force. If the legislation was not in force at this time, the Council indicated it would have implications for ten per cent of the State's NCP payments for the year 2000-01. In conducting a December 2000 supplementary assessment, the Council proposed to review the new Act upon enactment for conformity with CoAG water reform commitments.

Developments since June 2000

Rights in Water and Irrigation Amendment Act 2000

The *Rights in Water and Irrigation Amendment Act 2000* (the RIWI Act) was enacted on 28 November 2000. All of the reforms contained in the RIWI Act and supporting regulations were proclaimed to take effect from 10 January 2001.[28]

The RIWI Act specifies the licensing, trading and environmental protection processes to be followed by the Water and Rivers Commission (WRC) and has been the subject of a wide-ranging and comprehensive public consultation program that began in 1997.

The objectives of the RIWI Act are to:

- manage water resources sustainably;
- protect environmental values;
- encourage the efficient use of water;
- actively engage local communities in management through the establishment of water resource committees; and
- consolidate and clarify the rights to control and use of water.

Water property rights

The RIWI Act clarifies the rights to control and use water including the basic rights of the Crown and individuals in relation to surface and ground water. The RIWI Act extends the vesting of rights to control and use water in Western Australia from previously designated areas to cover all watercourses, wetlands, or underground water sources.

A direction by WRC overrides all other rights recognised by the amended RIWI Act. This gives WRC the power to manage water resources where immediate action is necessary. WRC is required to give reasons for the direction and water users can appeal to the tribunal (see appeals section) to ensure protection of their rights.

Riparian rights, or the rights of property owners to take water from a waterway on their property for domestic and stock water, are granted

[28] Regulations still need to be drafted relating to the appeals system. Transitional provisions will apply in the interim (see appeals section).

under the RIWI Act but have been constrained to limited household use.[29] In times of shortage, local by-laws may be developed by WRC to ration flows. Further, the use of springs on private properties are also subject to by-law control where usage will have a significant impact on other water resources. To ensure that proper consideration is given to landholders' rights, controls can only be introduced under by-laws, when a water management committee, WRC and the Minister all agree they are needed. Local by-laws and licences will only control the way water is taken in areas of overallocation or where extraction may cause environmental damage.

Rights to overland flows, that is water outside of streams, are not vested in the Crown. However, the RIWI Act places limits on the use of overland flows if the taking of that water would affect the Crown's interests. The RIWI Act therefore has the effect of placing legal restrictions throughout the State on any use of overland flow that has a significant impact on stream flow. Given this safeguard to protect its interests, Western Australia has not sought to regulate overland flows in this legislation. Hence the Second Reading Speech notes that:

> *The control of so-called farm dams has quite unnecessarily concerned farmers during the consultation over the reforms. I am talking about those dams or tanks that are so common in Western Australia; where a farmer or pastoralist harvests stock water from the flow over his or her land. The Government has no intention, and never had any intention, of controlling or licensing these small farm dams – they are the lifeblood of the farming community.*
>
> *The legislation does not and will not restrict the building of dams that don't have a significant impact on water flow in watercourses. In fact the Bill amends the Act so that it cannot interfere with a farmer's right to harvest reasonable quantities of water from their land for stock supplies.*

Overland flows will be regulated where a dam intercepts a flow and makes a substantive change to the volume of water in a river system or wetland. The RIWI Act provides for licensing schemes for overland flow to be implemented through subsidiary legislation.

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[29] These do not extend to watering cattle or stock raised under intensive conditions, or to irrigation of a garden for commercial purposes.

Licences

The RIWI Act increases the scope and flexibility of licensing and ensures that 'licensing is introduced only where it is needed'. The reforms allow local by-laws to be used as an alternative to licensing. WRC will have discretion to the granting, transfer and terms of licences.

Users eligible to hold a licence are defined as miners, farmers, irrigation co-operatives, water service providers, pastoralists, and any landowners or occupiers on whose land water occurs. Other persons may hold a licence if they have the permission of the landowner to take the water from the land on which it occurs. A decision to refuse to grant a licence requires WRC to give reasons and is subject to appeal. For surety of investment reasons, persons planning to make investments may also apply to WRC to give an undertaking to grant a licence for when they become eligible.

Special licences that were in place prior to the passage of the RIWI Act are retained for a ten-year duration. Other licences can be issued for definite or indefinite periods. WRC can, subject to appeal, terminate a licence of indefinite length at any time. WRC will generally issue licences for periods of five to ten years. The RIWI Act builds in the presumption that licences will be renewed unless there is a valid reason for WRC refusal. This will allow licence holders to have an expectation to hold them in perpetuity. The period for which a licence is granted or renewed is subject to appeal.

Water entitlements in a licence are defined by volume and the practice is that all licences have maximum volumes expressed in kilolitres. Volumes will vary from time to time due to climatic variation, and reliability of supplies will be indicated in allocation plans.

The aim is to introduce longer term licences that can be changed as necessary and for water resource management problems to be dealt with by water allocation plans (see below) as they arise. Western Australia states that this will maximise the value of licences and enable WRC to manage water. The writing of water management plans, subject to public review, will be the main means of amending licences. WRC will amend, rather than cancel a licence where possible, and this is subject to appeal to the Tribunal. Licences will be required to meet any conditions set by the Minister for the Environment.

Licences will not be issued to people who do not have access to the land on which the water occurs. Where land is sold, licence holders have 30 days to apply to transfer the licence to the new owner. Furthermore, the RIWI Act provides that a licence holder must use the water within six months of issue, or lose the licence.

Registry

The RIWI Act creates a licensing register which will provide a publicly available list of property rights to use water, including licences and directions. It will be searched similar to land titles to enable people to confirm those rights.

The register is primarily for information. It does not guarantee title but rather contains information about the title. Any person seeking to buy a licence should obtain a copy of the licence from the holder or WRC.

The register will list the licence number, licence holder details, water entitlement volume, the water resource and location from which the water is taken. It will also include details of security interests including where a licence has been mortgaged, leased, conditions imposed on a licence, the size of an allocation, and transfers.

The register is to be established immediately. Any person wishing to inspect the register will need to visit a WRC office. In the next twelve months it is intended to place the register on the internet.

With the introduction of trading, licences will acquire a monetary value. The licensee can apply to WRC to have noted on the register that a person has a security interest in the licence. Lenders will require a notation as a condition of lending money against a licence. The RIWI Act requires that a party with a security interest in a licence be informed of certain events that may affect the value of licences. This will allow parties to take actions to protect their interests.

Allocation plans

Prior to the passage of the RIWI Act, there was no statutory basis for water allocation planning in Western Australia. The RIWI Act formalises Western Australia's approach in providing water for the environment through a system of statutory allocation plans that will be the basis for allocating water, setting environmental flows and adjusting allocations.

The RIWI Act provides for three levels of water management planning, namely regional, sub-regional and local area management plans, and the provision for water for the environment is considered at each of these allocation planning levels. The purpose of plans is to manage water quantity and quality within a catchment. They will deal with both ground and surface water and adopt an integrated catchment management focus. All aspects of land and water management will be considered, and consistency achieved between the various levels of plans. The three levels of plans are described below.

- **Regional management plans** will identify ecological and other environmental values at a regional level including the likely future

uses of the water resource. They may give a preliminary indication of the quantity of water that could be diverted from the region including the possible scale of any development. They also will indicate how water resources planning and management will be integrated with land use planning and management.

- **Sub-regional plans** will identify ecological and other environmental values at a sub-regional level, and will define Environmental Water Requirements (EWRs) and Environmental Water Provisions (EWPs) (see Provision for the Environment section below). These plans will establish ecologically sustainable development to be facilitated by WRC including the quantity of bulk water allocations for particular consumptive uses and how the rights to water are to be allocated to meet various needs. They will show strategies to be adopted to implement the plan including how EWPs will be incorporated into planning. Sub-regional plans will set out the objectives for water allocations to be taken into account by WRC in licensing.

- **Local area management plans** cover part of a single water resource for a specified local area (for example, a groundwater sub-area).

Plans will be prepared by WRC and require the approval of the Minister for Water Resources or, by delegation, the Board of WRC. The plans are of no fixed duration although they are subject to review within seven years. The RIWI Act provides for rollover of plans where the objectives are being met. They can only be revoked or amended with public and relevant government agency consultation.

WRC will develop a timetable for the preparation of plans including those that will contain environmental water provisions. The timetable will be open to inspection by stakeholders and regularly reviewed.

Water management committees

WRC has previously been assisted by statewide non-statutory advisory committees. The RIWI Act extends the role and functions of these committees by forming local water management committees. Their function will be to provide WRC with assistance and advice prior to the making of plans or local water resource by-laws by the Minister.

The Minister will determine committee membership which will include local government representatives, employees of businesses operating within the area, public servants and WRC staff. They will be drawn from the local community and contain appropriate expertise. Once established, committees will be subject to WRC's direction and oversight. WRC may delegate powers such as approving licences to committees.

Provision for the environment

An important element of water allocations is the provision for water for the environment. Western Australia has recently finalised its EWP policy which incorporates amendments made by the Act. The EWP policy describes principles to be applied by WRC in determining how much water should be retained for the environment when allocating and reviewing water use rights. A discussion of the draft EWP policy was provided in the Council's June 1999 second tranche assessment report for Western Australia. The discussion that follows relates to the final EWP policy.

The EWP policy required changes to the RIWI Act to support water allocation planning. The RIWI Act provides for water for the environment, and the objectives are identified in section 4(1) including:

> *"to provide for management of water resources, and in particular –*
>
> *(i) for their sustainable use and development to meet the needs of current and future users; and*
>
> *(ii) for the protection of their ecosystems and the environment in which water resources are situated, including by the regulation of activities detrimental to them;'*

To meet these objectives, the RIWI Act provides for:

- a statutory planning process which requires identification of environmental values and how the rights should be allocated including the needs of the environment;
- the Minister for the Environment as the ultimate authority in setting environmental water provisions. Water allocation plans and projects that may have a significant impact on the environment are assessable under the *Environment Protection Act 1986* (as explained below);
- the need to obtain the approval of the Minister for Water Resources before implementation of plans;
- the establishment of local water resource management committees including, where practical, people with knowledge and experience in the conservation of ecosystems;
- a statutory framework for broad public consultation in plan development and, specifically, consultation with water resource management committees and stakeholder bodies; and
- the ability for WRC to put conditions on licences or to amend licences to protect the environment.

The policy requires WRC to undertake water allocation planning in a way that protects ecological values including biodiversity of dependent ecosystems, and supports ecological sustainable development.

The Environment Protection Authority (EPA) has a primary role in identifying and determining ecological values. In particular, the EPA will determine:

- EWRs which are the water regimes required to maintain ecological values at a low level of risk and will be determined on the basis of best available scientific information. EWRs will be reviewed as needed, or as part of the overall review of sub-regional management plans which contain EWRs within seven years; and

- EWPs which are the outcomes of the water allocation decision-making process and are the constraints and conditions on the water quantities for licences taking into account ecological, social and economic impacts. They may meet in part or in full EWRs. EWPs will be less than EWRs where some ecological impact is accepted.

Where there is limited information, and interim estimates of EWRs and EWPs are required for allocation planning and licensing, WRC will set allocations on a precautionary basis that minimises ecological risk.

WRC will aim to meet all EWRs where EWPs are proposed. If, in the view of WRC, EWRs cannot be met WRC will ensure that:

- the risks to ecosystems of not meeting EWRs are transparently identified, together with the social and economic costs of meeting EWRs;

- community consultation is undertaken in developing allocation scenarios and EWP options; and

- the proposed allocation strategy is referred to the EPA for assessment and/or advice under the *Environmental Protection Act 1986.*

EWPs will also consider environmental changes that have occurred from past flow regulation, water abstraction, adjacent land uses or water quality effects, as well as the capacity for restoration of altered ecosystems. If, after EWPs have been set, they cannot be met in the short term because of allocations to existing users, a strategy will be developed in consultation with users and other stakeholders to ensure the provisions are met in the minimum practical time.

The policy also provides for the following outcomes.

- EWPs will not form part of any market in tradeable water entitlements.

- Social water requirements will form part of EWPs where they do not impact unacceptably on ecological values. For example, where protection of recreational or other social values is of high importance this may require the maintenance of water levels in wetlands and river pools during periods of low rainfall.

- Any mitigation requirements will be separately identified and are additional to EWRs. These may form part of EWPs. If this is not possible, they will be met by unallocated water or water otherwise available for consumptive use.

- Further allocations to new or existing users will only occur where EWPs are being met. Where EWPs have not been set, allocations to users will be made on a precautionary basis to minimise ecological risk.

The EWP policy recognises the importance of community involvement and adaptive management processes in establishing and reviewing EWPs based on improved knowledge and community values. WRC will monitor to ensure EWPs are being met and the environment protected.

Allocation plans will be put to the Minister for Water Resources for approval. Where plans are formally assessed under the provisions of the *Environment Protection Act 1986*, the Minister for the Environment may set binding conditions requiring environmental values to be protected and requiring WRC to ensure EWPs are adopted in plans. Where established, water management committees will play a key role in advising WRC on these matters.

Local by-laws

The Minister on the advice of WRC may make local by-laws for specific purposes such as the building of dams, taking water from non-artesian wells, the amount of water that can be taken from an augmented flow, and persons eligible to hold licences. Local by-laws can replace licences as an authorisation to take water. Additionally, regulations may be passed for controls over a large area, to limit the scope of by-laws or to implement wider government policy.

Compensation

In relation to compensation, the RIWI Act provides for water users to be compensated where a forced reduction in their level of use occurs as a result of granting an increase to others. In such an instance, the water user who benefits from the change pays the compensation. If a change is made in the public interest, such as to increase the flow of a river for tourism, to resume water for town water supply, or major public development, compensation will be paid by the State.

Under other circumstances, compensation is payable by WRC if a licence is altered or a licence for existing use is refused. Compensation can be paid if a licence is altered because:

- it is to protect the water resource from damage;
- it is to protect the environment;
- the water supply is inadequate;
- it is to regulate use of the water resource;
- it is to make the licence consistent with a plan or by-laws; or
- it is to make the licence comply with other laws.

Compensation would not be payable if a licence is altered because a person contravenes the law, the change is necessary to prevent serious damage or loss of life, or the licence is not being used.

Exemptions from compensation apply and compensation will not be paid if a licence is altered fairly or reasonably, where the same restrictions apply to other water users. It is up to WRC to decide if the change is fair and reasonable and this decision can be appealed. The legislation provides for arbitration under the *Commercial Arbitration Act 1985* as to the amount of compensation.

The RIWI Act also gives WRC the power to buy licences where the licence holder wishes to sell. WRC would do this where it would not be fair to uniformly increase or decrease entitlements. For example, if it was unduly difficult or costly for licensees to adjust to a smaller entitlement. This will allow WRC to buy back entitlements that are excessive and sell licences or entitlements if additional water becomes available.

Trade

The RIWI Act makes it possible for a person to transfer or trade their licence or water entitlement with others. Western Australia has identified a number of irrigation districts such as Carnarvon, Wanneroo and Jindong where irrigators can no longer develop their businesses due to entitlements being fully allocated. The RIWI Act will allow persons with a licensed water allocation to sell or lease their licence.

The Second Reading Speech relates the benefits of this:

> *In these areas the transfer of licences between water users opens up opportunities for restructure of the irrigation industry, allowing the most profitable and productive uses to grow and others to be phased out*

> *without any burden on the taxpayer. It is the only fair way of allowing people with development aspirations to gain access to water.*

Trading in an area can only occur with the permission of WRC. WRC advise that their decisions would be made based on water resource management objectives contained in plans as determined by water resource management committees, and possibly social and economic objectives for the region. A decision not to agree to a trade is subject to appeal and the tribunal (see over) can allow the trade if WRC has not acted appropriately or has considered irrelevant matters.

The RIWI Act also includes provisions for local by-laws to prohibit the transfers of certain licence types. The reason for this is stated as:

> *the introduction of licence trading, if not properly controlled, could create conditions favourable to speculation. So to manage this, controls are placed on who can hold a licence.*

Provisions establishing those eligible to hold a licence have been carefully drafted to avoid speculation in licensing once trading is introduced. Conditions on licences and, hence trading, include that:

- a person must have access to the land on which the water occurs to collect and divert the water. The RIWI Act allows for local by-laws to lift this restriction, where appropriate, to allow anyone to hold a licence. This would remove this anti-speculative trade restriction;

- a person issued with a licence must use the water within six months of acquisition; and

- a licence cannot be transferred without the consent of a person who has a security interest noted on a licence.

Appeals

The RIWI Act provides for the establishment of an independent statewide appeals tribunal. The Minister, on receiving an appeal, must pass it to the tribunal for a final ruling. The Minister has no discretion in the matter.

Regulations are still to be passed to establish the panel of up to three tribunal members to resolve appeals. As a transitional measure, the RIWI Act allows the Minister with the consent of the licensee, to directly appoint tribunal members and to suspend any decision by WRC until an appeal is resolved.

Assessment

The Council commends Western Australia on the passage of water legislation that provides for reforms that seek to address CoAG commitments on water reform. Comments on each aspect of the reform commitments are provided below.

Recognition of environmental needs/rights

The finalisation of the Environmental Water Provisions policy and amendments to the RIWI Act has created an adaptive natural resource management framework that requires protection of ecological values, application of the precautionary principle, and ecologically sustainable development.

Water allocation plans, containing environmental water provisions, may be set for up to seven years, and WRC will devise a timetable available for public scrutiny for the future preparation of plans. Where EWRs are set, Western Australia is committed to transparently reporting the risks to the ecosystems of not meeting the objectives together with the social and economic costs of meeting the requirements. Where EWPs cannot be met in the short term, a strategy will be developed with all stakeholders to achieve the objectives as soon as possible.

Objectives will be set on the basis of community consultation and EPA assessment or advice. The EPA will have a key role in identifying ecological values at regional, sub-regional and local area management levels. The Minister for the Environment may set binding conditions requiring environmental protection in EWPs to be reflected in plans.

Furthermore, WRC has retained a discretion to issue a direction at any time to manage water resources where action is necessary to address problems of environmental degradation as they emerge. A direction may be given at any time where the environment is legitimately at risk.

Western Australia has adopted a policy that environmental protection will be dealt with as issues arise on an ongoing basis. The Council notes the CoAG requirement for a review of allocations every five years should be able to be accommodated by the statutory requirement for review as the need arises but certainly within seven years. The Council has reviewed the Environmental Water Provisions Policy, and considers that Western Australia has met its commitments in this area.

For the second tranche, jurisdictions were required to submit individual implementation programs outlining a priority list of river systems and groundwater resources, including all river systems deemed to be stressed. Western Australia provided a timetable as at March 1999. A major review was carried out by the National Land and Water Audit in 2000 and an update of priorities for Western Australia was foreshadowed. The audit

has only recently been completed and the timetable is now being reviewed and will be published in the third tranche assessment.

Separation of water and land title

The RIWI Act provides for separation of water rights from land title. Under the RIWI Act, it is now possible for a licence holder to buy more water independent of the need to buy land. A landholder has to apply to WRC for a licence to take water and persons other than land holders can hold licences. The RIWI Act requires licence holders to have access to, not ownership of, the land on which the water resource occurs. Further, upon sale of a property, the new owner must apply to transfer a licence. The water in this instance could be transferred to other licence holders, given up or transferred to the new land owner.

The Council recognises that Western Australia has created a tradeable water right that partially separates water from land title. The Council considers that Western Australia has met all second tranche obligations in this area but will monitor the efficacy of arrangements as part of the third tranche assessment.

Clear specification of water entitlements and the creation of water property rights

In relation to water property rights, Western Australia is in the enviable position that few areas of the State are fully allocated.

Licences will be issued for periods of five to ten years although these periods may be of a longer duration once statutory plans are established. WRC will be conducting further studies on maximising the duration of licence tenure. There is also a presumption that licences will be renewed such that licence holders have an expectation of holding a licence in perpetuity.

A publicly available registry will include details of security interests including where a licence has been mortgaged, leased, conditions imposed, the size of an allocation, and transfers. A party with a security interest in a licence is required to be informed of certain events that may affect their interests.

The WRC timetable for the preparation of water management plans, including those which will contain environmental water provisions, will be open to inspection by stakeholders and regularly reviewed.

The Council also notes WRC discretion to issue a direction at any time to manage water resources where action is necessary and that a direction overrides all other rights. The reasoning for this is the view that the value of water property rights will be maximised at any time by addressing problems of environmental degradation as they emerge. While the need for sound resource management is not questioned and the inclusion of

directions on a public register is noted, the Council suggests that such a power be used sparingly, and that there is a need for regular reporting on the progress of natural resource management to ensure that the value and security of licensed property rights are not undermined. It goes without saying that the Council would want to see the provision applied where the environment is legitimately at risk. The Council will keep this issue under review.

The Council has noted the emergence in the last six months of a national debate on what constitutes a 'water property right' under the CoAG reforms. The Council Secretariat is examining the ARMCANZ national principles on property rights in water, and recent work commissioned by the High Level Steering Group on Water. The Council is working with officers from the Commonwealth and all State and Territory Governments and is in the process of producing a paper for public release.

A central tenet of this paper is the issue of further refinement of what constitutes an effective water property right and its importance in relation to national trading mechanisms. Water property rights have not been well defined leading to uncertainty, potentially discouraging otherwise desirable investment, and inhibits trading water to higher value uses. It is the Council's view that rights need to be well specified in the long term sense to ensure water users get the most security they can about the nature of the property right, and absolute security on the issue of ownership.

The Council will therefore be assessing the efficacy of water property rights arrangements as a key focus of the NCC's third tranche assessment for all jurisdictions. Generally speaking, the Council will be looking for property rights to allow for efficient trade and investment to be maximised with adequate provision made for adaptive resource management, including mechanisms to ensure adequate environmental protection, and the needs of communities.

In conclusion, Western Australia has in place a legislative framework for the determination and trading of water entitlements which recognises consumptive and environmental needs. Security of rights is better specified, with priority renewal for existing licence holders on expiry of a licence. For these reasons, the Council considers that Western Australia has met all requirements for the second tranche assessment and will monitor the efficacy of these arrangements as part of the third tranche assessment.

Trade

The RIWI Act represents a first step by Western Australia in relation to the introduction of widespread water trading. Western Australia has been concerned to limit the scope for speculation in water rights from water

trading. To do this, restrictions have been applied in the RIWI Act, including provisions that local by-laws can prohibit transfers, and restrictions on who can hold a licence tied as it is to the need for access to land and on water use within six months of a licence being issued.

Western Australia argues these restrictions are based on widespread community concern about the potential for speculation, and that without this concession it is doubtful that statewide trading could have even been introduced in Western Australia. The Government made a judgement that the benefits of early passage of legislation containing precautionary restrictions outweighed the costs of delaying the reforms.

The Council acknowledges there has been little trade in water in Western Australia to date and that, in many areas of the State, trading is unlikely to occur until demand for water increases and the resource becomes fully allocated. However, the Council is also concerned to ensure that impediments to trade, especially legislative ones, are minimised and do not undermine the intent of the CoAG reforms.

The Council believes a feature of an efficient market is the useful role intermediaries such as agents and brokers can play in aggregating small quantities of water from a number of licence holders into useful parcels of saleable water. Speculation can be beneficial to trade by making the marketplace more active and by minimising fluctuations in price between seasons. It also provides water users with more flexible options for managing risk (for example via options, futures contracts and other derivative instruments). These are sophisticated market instruments. Of course, the extreme of this scenario is the potential for aggregation to the point of monopoly power resulting in market manipulation. The Council will soon be releasing a paper in relation to water property rights that discusses this issue.

The RIWI Act also contains options to remove restrictions. For example, there is scope for local by-laws to be passed that would lift the restriction requiring access to land on which the water occurs to allow anyone to hold a licence. This would remove the anti-speculative trade restriction. Western Australia has advised that whether or not these by-laws are made in future is a matter of policy. As experience with trading increases in Western Australia, the community will become more comfortable with buying and selling water property rights and may revise the restrictions on market participation.

The Council will be looking for further progress to occur as part of the third tranche assessment. In particular, as the market becomes more experienced with water trading there should be scope to remove some of the precautionary restrictions to trade. For the third tranche assessment, the Council will look for Western Australia to provide a public benefit justification for any restrictions imposed on trade.

In establishing a legislative framework to enable water trading, the Council considers that Western Australia has met its minimum commitments in relation to trade for the second tranche assessment. The Council will monitor the efficacy of these arrangements for the third tranche assessment.

Public consultation and education

Western Australia has engaged in extensive public consultation since 1997 with all key stakeholders in the passage of the RIWI Act. The Council considers that Western Australia has met its commitments in this area.

The Council offers the additional comment that given the infancy of trading arrangements there is a need for robust public education to engender confidence in the trading system. For further reform to occur, it will be important for Western Australia to publicise the benefits of allowing any person to hold a licence.

Recommendation

At the time of the June 2000 assessment, Western Australia had introduced a Bill to establish an allocation and trading framework into the Parliament but was yet to be enact this. The Council therefore recommended a further supplementary assessment be conducted in December 2000 to ensure the RIWI Act was substantially in force.

The RIWI Act has now been passed and has implemented some landmark reforms for the water industry. The RIWI Act clarifies water property rights, partially separates water rights from land title, defines the scope of natural resource management including environmental protection processes, enhances the allocation process, and establishes in legislation the role of water management committees.

Given the progress made by the Western Australian Government, the Council considers that Western Australia has now met its second tranche water reform obligations. The Council will monitor the efficacy of these arrangements for the third tranche assessment. This completes Western Australia's water reform obligations against the second tranche commitments.

Northern Territory

Reform commitment: Institutional reform

Clause 6 of the CoAG Framework notes governments' commitment to separate the roles of service provision, standard setting, enforcement and resource management. The aim of this clause is to promote improved

service provision and regulation by increasing role clarity and eliminating potential conflicts of interest.

The June 1999 second tranche assessment noted the Northern Territory's progress towards meeting this commitment but also expressed concern that the Power and Water Authority (PAWA), the Northern Territory's primary provider of water and sewerage services, retained a number of regulatory functions. Consequently, the Council was not satisfied that the Northern Territory had met all of its second tranche commitments. However, given that the Northern Territory had demonstrated a genuine commitment to achieving appropriate reform in a timely manner, it recommended that this matter be revisited in a supplementary assessment in December 1999.

Supplementary assessments for the Northern Territory were undertaken in December 1999, June 2000 and October 2000. In each instance, the Northern Territory demonstrated continued progress towards resolving this matter as part of the broader reform package designed to achieve PAWA's $30 million per annum financial improvement target. Progress included an independent review of water and sewerage legislation, which found PAWA's regulatory responsibilities included setting its own terms and conditions of supply, as well as regulation of plumbing inspection and standard setting. The review concluded that current arrangements 'do not implement the essential separation of roles and functions envisaged by the CoAG Framework'. In addition, the review found that the pricing process was not independent, consultative or transparent.

The review recommended:

- licensing of all service providers by the Utilities Commissioner. The licence would include a duty to supply in specified areas, clarity of performance standards, monitoring by the Commissioner or other relevant agency and customer contracts or charters;

- prices oversight by the Utilities Commissioner; and

- regulation of plumbing standards by the Department of Lands, Planning and Environment.

The June 2000 supplementary assessment noted the Council's support for the review recommendations. However, the Council found that the Northern Territory Government was still to formally commit to implementing the recommendations of the review. Consequently, the Council concluded that:

> *Not only is there the failure to have legislation before the Parliament, or even drafted, but in addition the Council has not been provided with advice that the*

> *Northern Territory Government has endorsed a clear reform path (NCC 2000b, p.136).*

Given the above, and the fact that this commitment was originally due by the end of 1998, the Council recommended that 2.5 per cent of the Northern Territory's NCP payments for 2000-01 be suspended.

This suspension was subsequently lifted following a supplementary assessment in September 2000. This assessment noted the introduction of the Water Supply and Sewerage Services Bill 2000 in the week of 16 October which gives effect to the review recommendations. However, the Council also proposed a further supplementary assessment in December 2000, foreshadowing the potential for further NCP payment implications should the legislation not be substantially in force by 1 January 2001.

Developments since October 2000

The Northern Territory has advised the Council that the *Water Supply and Sewerage Services Act 2000* (the Act) was passed on 28 November 2000 and will commence on 1 January 2001.

The stated aims of the Act are to:

- promote the safe and efficient provision of water supply and sewerage services;
- establish and enforce standards of service in water supply and sewerage services;
- facilitate the provision of financially viable water supply and sewerage services; and
- protect the interests of customers.

Measures included within the Act to promote these aims include:

- the retention of a single-supplier model for defined geographical areas which are declared by the Regulatory Minister (currently the Treasurer) via notice in the *Gazette*;
- the transfer of regulatory functions including the transfer of price regulation to the Regulatory Minister with independent advice to be provided by the Utilities Commission;
- refining existing trade waste arrangements whereby the licensee has an obligation to accept trade waste that complies with predetermined guidelines thus eliminating the discretion previously held by the service provider and increasing the rights of customers; and

- requiring a licensed supplier to comply with service and supply conditions to be approved by the Regulatory Minister which under Division 2 of the Act will include:

  - developing and publishing a customer contract in consultation with customers setting out the rights and responsibilities of each party regarding service delivery;

  - developing an asset management plan to ensure optimal long term management and use of infrastructure for the benefit of customers;

  - developing and publishing codes on matters including land development, asset protection, new connections and trade waste approvals;

  - monitoring and reporting on levels of compliance with licence conditions;

  - procuring an audit of compliance if required by the Utilities Commission;

  - demonstrating a financial or other capacity to continue operations under the licence;

  - notifying the Utilities Commission about changes to officers and if applicable major shareholders; and

  - complying with the requirements of any scheme approved and funded by the Minister for the performance of Community Service Obligations.

Assessment

The retention of the single service provider model represents a restriction on competition. However, the independent review of the water and sewerage legislation concluded that this restriction provided an overall public benefit. The Second Reading Speech accompanying the Bill also noted that there is no evidence this restriction adversely impacts on the Northern Territory economy and that the new legislation will provide for measures such as customer contracts to offset monopoly rights.

The Council supports the introduction of a licensing system for all water and sewerage service providers and the requirement for customer contracts, regular reporting and robust asset management plans as part of licence conditions. The Council also commends the extension of the role of the recently established independent regulator, the Utilities Commission, to include the water supply and sewerage industries. Its functions will include monitoring and reporting compliance with service standards and

providing advice on pricing matters such as future price paths, pricing methodologies and Community Service Obligations.

A number of minor amendments were made during the passage of the *Water Supply and Sewerage Services Act 2000*. These do not have a significant impact on compliance with CoAG commitments. The amendments included section 41(aa) which requires that licensed activities be ringfenced from other competitive undertakings, and section 95A which makes it an offence to waste water.

The introduction of the new arrangements will mean that the Northern Territory Treasurer is now responsible for setting both prices and dividends for the government owned service provider. The Council suggests that vesting responsibility for dividends and prices in the one office theoretically provides a potential for higher prices and dividends and thus higher government returns than would otherwise be the case.

The Northern Territory's dividend policy states that an annual ordinary dividend of 50 per cent of after tax earnings should be paid to the government although there is scope for a higher or lower proportion depending on factors such as liquidity and capital requirements. The Territory's dividend policy also provides for special dividends in certain circumstances. The Council also notes that pricing decisions are to be made based on advice provided by the Utilities Commission (whose reports will be publicly available) and dividend payments are transparently reported (for example, via PAWA's Annual Report).

The Council is satisfied that the above arrangements are consistent with second tranche commitments. However, in future assessments, the Council will look for the Northern Territory Treasurer to release a public statement of reasons where the Treasurer does not adopt the pricing recommendations of the Utilities Commission. This statement should outline the public benefit underlying the Treasurer's decision.

Division 5 of the Act makes provision for the Minister to grant exemptions from the provisions of the Act on terms considered appropriate by the Utilities Commission. The Council supports the provision for exemptions as they may be appropriate in certain circumstances. However, in future assessments the Council will look to ensure that any exemptions do not undermine CoAG commitments.

In summary, the Council concludes that the new regulatory regime established by the *Water Supply and Sewerage Services Act 2000* is consistent with second tranche commitments. While somewhat beyond the original timeframe, these reforms have been achieved as part of broader reforms of PAWA and are in excess of minimum second tranche commitments. The new arrangements when implemented will provide a sound legislative base for more efficient, effective, transparent and accountable service provision and regulation. In the third tranche

assessment, the Council will look for evidence that the new regulatory regime is being applied. The Council will also look to ensure that where the pricing recommendations of the Utilities Commission are not adopted by the Northern Territory Treasurer a public statement of reasons is provided outlining the public benefit underlying the Treasurer's decision.

3 Competitive neutrality: Queensland

Background

Under clause 3 of the Competition Principles Agreement (CPA), governments have an obligation to apply competitive neutrality principles to significant publicly owned business activities, where appropriate. The objective is to eliminate resource allocation distortions by removing any net competitive advantage available to significant government businesses that arises simply as a result of the business's public ownership.

In the second tranche NCP progress assessment in June 1999, the Council identified a question about the application of competitive neutrality principles by Queensland Rail (QR). This had arisen in relation to the finding by the Queensland Competition Authority (QCA) in July 1998 that QR was not applying appropriate competitive neutrality principles in respect to fares on the Brisbane to the Gold Coast route, and subsequent actions by the Queensland Government (NCC 1999).

The Queensland Treasurer and Premier rejected the QCA decision that there had been a breach of the principle of competitive neutrality in relation to the fares charged by QR in August 1998. At the time, however, the Treasurer and Premier requested the Minister for Transport to develop, as a matter of priority, a comprehensive Community Service Obligation (CSO) framework for passenger transport in South East Queensland, taking account of the principle of competitive neutrality.[30] Because there was then an application for judicial review of the decision of the Premier and Treasurer,[31] and in the light of the Minister's undertaking to develop CSO framework, the Council deferred assessment of Queensland's competitive neutrality compliance to a supplementary process.

As part of the June 1999 second tranche assessment, the Council outlined its view that the passenger transport CSO framework would be the key to considering Queensland's compliance with its NCP competitive neutrality obligations. In the Council's view, transparent specification and direct funding of the non-commercial obligations which government place on their businesses is essential to achieving the central resource efficiency objective underpinning clause 3 of the CPA. Access to clear information about what is, and what is not, required for the delivery of social obligations is necessary to resolve debates about behaviour by government

[30] Community Service Obligations are goods and/or services which a business would not provide if it considered its commercial interests only, and which the Government considers are necessary to deliver particular social objectives.

[31] The Supreme Court of Queensland denied the application in September 1999.

businesses which is relevant to the delivery of governments' social programs and behaviour which contravenes CPA clause 3. The policy approaches of all governments, including Queensland, recognise that CSOs should be clearly defined and transparent.

Decisions taken by the Council of Australian Governments (CoAG) in November 2000 relating to the NCP assessment of governments' competitive neutrality activity are directly relevant to this supplementary assessment. CoAG resolved that, for purposes of competitive neutrality, the government parties to the NCP Agreements are free to determine who should receive a CSO payment or subsidy and that there is no requirement for governments to undertake a competitive process for the delivery of CSOs, but that such payments or subsidies should be transparent, appropriately costed and directly funded by government.

The second tranche supplementary assessment of 30 June 2000 and Federal Treasurer's decision

In the supplementary second tranche assessment of 30 June 2000, the Council noted advice from the Queensland Treasurer that the Government was proceeding with the implementation of a CSO framework for passenger transport in South East Queensland and was also ensuring transparent arrangements between itself and QR by entering into formal contracts for the delivery of rail services. However, at the time of the assessment, Queensland was still to finalise the South East Queensland passenger transport CSO framework.

The Council considered that the failure to finalise the framework meant that Queensland had not satisfactorily addressed its second tranche competitive neutrality obligations. However, because there had been some progress, the Council recommended that, rather than reduce Queensland's NCP payments, the Federal Treasurer suspend an amount equivalent to 10 per cent of Queensland's NCP payments for 2000-01 (approximately $8.6 million). The Council recommended that the suspended payment be reinstated if Queensland implemented an appropriate framework. It proposed a further supplementary assessment prior to 31 December 2000.

On 2 November 2000, the Federal Treasurer suspended an amount equivalent to 10 per cent of Queensland's NCP payments for 2000-01 in relation to this matter. The Treasurer imposed the suspension pending the Council's assessment of Queensland's progress in finalising a passenger transport CSO framework for South East Queensland, which would include defining and costing CSO obligations on QR.

Developments since 30 June 2000

The Queensland Premier and Treasurer wrote to the Council on 22 December 2000 (received 4 January 2001) concerning the Government's

approach to the provision of public transport services on the Brisbane to Gold Coast route and providing a Queensland Transport (QT) paper entitled '*A Community Service Obligation Framework for Public Transport in South East Queensland*'.

The letter from the Premier and Treasurer summarises decisions taken by the Queensland Government in relation to the provision of public transport services on the Brisbane to Gold Coast route. In the letter, the Government states that it has decided it is in the public interest to subsidise passenger rail services but not coach services. The mechanism for doing this is a transparent contract between QT and QR for Citytrain, the provider of rail services over the route. The letter states that:

- as of 1 July 1999, QR was contracted through the Citytrain Rail Service Agreement to provide suburban and inter-urban passenger rail services;
- the annual value of the contract is $283 million, including depreciation of assets and a rate of return component;
- the value of the contract was determined following an external assessment prior to negotiation; and
- the Government has decided that it is not in the public interest to subsidise private coach transport between Brisbane and the Gold Coast.

The CSO Framework developed by QT is based on the Queensland Treasury generic policy model, *Community Service Obligations A Policy Framework*. The Treasury model outlines a five-stage process for delivery of CSOs – identification of candidate CSOs, specification of these CSOs, selection of deliverer, negotiation of contracts and ongoing review.

QT states that the Framework is designed to address the first two stages: the identification and specification of public transport CSOs for South East Queensland. QT considers that the other elements of the Treasury model are addressed by the contractual arrangements between QT and QR.

Assessment and recommendations

The competitive neutrality obligation under NCP

The competitive neutrality obligation is that governments apply competitive neutrality principles to significant government business activities, to the extent that benefits to the community outweigh the costs. Queensland has identified QR as a significant government business activity for the purpose of applying competitive neutrality principles. As a

consequence, the QCA finding of July 1998 that QR was not applying appropriate competitive neutrality principles on the Brisbane-Gold Coast route is relevant to the assessment of Queensland's compliance with CPA clause 3.

The Council concluded, in the earlier tranche assessments, that development of an appropriate CSO framework for public transport in the South East Queensland corridor, as proposed by the Queensland Premier and Treasurer in August 1998, provides a means of addressing the competitive neutrality concerns identified by the QCA. This is because transparency in the CSO arrangements relating to the provision of passenger services by QR over the Brisbane-Gold Coast route is directly relevant to achieving the fundamental efficient resource allocation objective of clause 3.

The CoAG decision of November 2000 in relation to assessing progress against CPA clause 3 obligations is the basis for the Council's assessment of Queensland's compliance with NCP competitive neutrality obligations. As set out above, CoAG directed that, for the purpose of assessing a government's compliance with the competitive neutrality requirements, the Council should have regard to several factors, including that:

- governments are free to determine who should receive a CSO payment or subsidy;
- there is no requirement for parties to undertake a competitive process for the delivery of CSO obligations; and
- CSOs should be transparent, appropriately costed and directly funded by government.

Assessment

The decision by the Queensland Government to deliver its public transport objectives for the South East Queensland corridor through an arrangement with QR is consistent with the conditions imposed by CoAG relating to governments' freedom to determine the recipient(s) of CSO payments. The CoAG decision means there is no obligation for the Queensland Government to subject the provision of the public transport CSO to competitive tender.

The Government has taken a number of actions in relation to the CoAG requirements for appropriate costing, direct funding and transparency of CSOs.

First, the Ministers' letter of 22 December infers that the Citytrain Rail Service Agreement between the QT and QR is a transparent contract. While the contract itself does not appear to be a public document, QR's annual report for 1999-2000 lists service outputs for which it receives

payments from the Government. These include Citytrain. QT's annual report for 1999-2000 identifies the introduction of performance based contracts for public transport operators as a strategy for improving public transport. It states that it has increased the efficiency and transparency of the urban passenger rail services funded by Government through the implementation and management of the $283m per annum Citytrain Rail Service Agreement with QR (QT 2000, p. 36).

The Ministers' letter also states that rail services in general are provided at an efficient cost, and that the terms of the Citytrain Rail Service Agreement were exposed to external scrutiny prior to the Agreement being finalised. While the Council is not aware of the nature of the scrutiny which took place, it accepts that, through this process, Queensland has met the CoAG requirement that the public transport CSO be appropriately costed. Further, the Government's purchase of rail services through a contractual arrangement with QR satisfies the CoAG requirement that CSOs be directly funded.

Second, Queensland Government officials have indicated that the Government plans to publicly release the CSO Framework, subject to removal of any commercial in confidence information. However, the Council has some questions about elements of the Framework. These include the identification of the Government's public transport objectives, the calculation of the costs and benefits of various transport modes, the degree of competition between rail and coach in South East Queensland, and that the Framework is released as a public document. The Council is currently working with Queensland to develop the Framework in these areas. The Council will provide a recommendation to the Federal Treasurer concerning Queensland's compliance with NCP competitive neutrality obligations in this area when these matters are satisfactorily resolved.

There is a further matter that has arisen through this process, which is relevant to Queensland's compliance with NCP principles. Queensland regulates to achieve local geographic monopolies of scheduled urban bus services in the South East Queensland region through the *Transport Operations (Passenger Transport) Act 1994* and the *Competition Policy Reform (Queensland) Public Passenger Service Authorisations Regulation 2000*. The latter is new legislation apparently aimed at excluding various passenger transport arrangements, such as the local bus geographic monopolies, from the provisions of the TPA. The Council will consider whether the legislation and regulations meet the tests in clause 5 of the CPA, relating to restrictive legislation, as part of the third tranche assessment in June 2001.

4 Driver demerit points: Northern Territory

Background

The Council of Australian Governments (CoAG) established a road reform program for the second tranche of National Competition Policy (NCP) comprising 19 agreed reforms (NCC 1999a). The second tranche NCP progress assessment in June 1999 found that there had been significant progress against this program, with over 80 per cent of the reforms then in place. However, only New South Wales and Victoria had implemented all elements at the time of the assessment.

Given the progress overall, the Council did not recommend a reduction in NCP payments for any jurisdiction in June 1999. Instead, the Council conducted supplementary assessments in March and June 2000 of the remaining reform elements in the seven jurisdictions that had not implemented the full second tranche program at June 1999. These assessments found that all jurisdictions except the Northern Territory had implemented, or were in the process of implementing, the full second tranche program. While the Northern Territory had implemented 15 of the 16 road reforms relevant to it at June 1999, the supplementary assessments found that the Territory had not satisfactorily complied with the one outstanding obligation to introduce a driver demerit points system.

Demerit points scheme

A demerit points system applying to all licensed drivers is a key element of the National Driver Licensing Scheme, which is directed at achieving national uniformity in the key requirements for driver licensing transactions and enhancing road safety. At the time of the second tranche assessment (June 1999), all jurisdictions except the Northern Territory had introduced, or announced their intention to introduce, a full demerit points arrangement.

On 30 March 2000, the Northern Territory advised that it had decided to introduce a demerit points scheme applying only to drivers of large commercial vehicles. The scheme, which is to operate from February 2002, will apply to drivers of all Territory-registered commercial vehicles greater than 12 tonnes (5 tonnes for buses). Northern Territory-licensed drivers of smaller commercial vehicles (less than 12 tonnes), buses (less than 5 tonnes) and private vehicles will not be covered. Interstate drivers of all vehicles who commit offences in the Northern Territory accrue demerit points in their own jurisdiction.

Supplementary second tranche assessments

In the March 2000 supplementary assessment, the Council concluded that the Northern Territory proposal was at odds with the demerit points element of the CoAG Framework. By providing immunity to categories of drivers in cases where the cumulative effect of driving offences would otherwise result in licence suspension, the Northern Territory's proposal risked undermining the achievement of road safety objectives. The Council suggested that the Northern Territory further develop its demerit points proposal, and undertook to conduct another assessment of progress in June 2000.

In June 2000, the Council found that the Northern Territory had not developed its demerit points proposal any further nor obtained an exemption from CoAG for this aspect of the reform program. The Council concluded that the Territory's limited scheme did not meet the CoAG Framework. In view of this, the Council considered the Northern Territory not to have fully met its second tranche road reform obligations.

Accordingly, the Council recommended an annual reduction in the Northern Territory's NCP payments equivalent to 5 per cent of the Territory's 2000-01 payments, to apply from 2000-01. The Council undertook to review the recommendation if the Northern Territory agreed to implement a demerit points arrangement consistent with the CoAG road reform framework, or obtained an exemption from CoAG for this aspect of the reform program.

On 2 November 2000, the Federal Treasurer suspended 5 per cent of the Northern Territory's NCP payments for 2000-01, pending a further Council assessment by 31 December 2000 of whether a driver demerit points scheme consistent with the CoAG Framework has been introduced or an appropriate CoAG exemption obtained.

Progress since March 2000

Following the March 2000 supplementary assessment, the Northern Territory Government wrote to the Council questioning the practicality and effectiveness of a full demerit points scheme. The Government noted the Territory's small population, large geographic area, limited enforcement resources and the lack of conclusive evidence that such schemes deliver any substantial road safety outcomes. The Northern Territory Government also questioned the justification for reducing NCP payments in relation to this matter, stating in December 2000, that it did not believe that implementation of a partial driver demerit points scheme has any anti-competitive implications.

Under NCP, governments are obliged to take action to implement reform frameworks established by CoAG. One of the NCP 'related reforms' is the

road transport program. The related reforms have objectives in addition to removing unjustified anti-competitive practices. For example, significant elements of the road transport program are aimed at achieving objectives such as improved road safety outcomes.

CoAG endorsed the demerit points arrangement as part of the second tranche framework. In the Council's view, this endorsement is clear recognition that, although a consistent national demerit points arrangement is not a 'pure' competition issue, CoAG had attached importance to appropriate and consistent regulation of dangerous driving behaviour. In these circumstances, whether or not the Northern Territory's partial demerits points scheme has implications for competition is not the central issue. CoAG included the demerit points arrangement in the second tranche framework and the role of the Council is therefore to assess progress with its implementation.

Where a jurisdiction believes that implementing a particular NCP reform is not appropriate, the jurisdiction should seek an exemption from CoAG for that reform. As the Council has made clear in previous assessments, the Council itself has no authority to change the NCP assessment framework or to determine that the framework (or any part of it) should not apply to particular jurisdictions.

Following the Treasurer's 2 November decision, the Northern Territory Government advised the Council on 18 December 2000 that it had written to the Australian Transport Council (ATC) seeking an exemption from the full demerit points obligation. The Northern Territory Government again stated that it does not consider its decision to implement only a partial scheme warrants imposition of a financial penalty as it believes its approach will have minimal implications for other jurisdictions.

The Northern Territory Government undertook to notify the Council as soon as it receives a response from the ATC.

Assessment and recommendations

The Northern Territory has implemented all elements of the CoAG second tranche road reform framework, apart from the comprehensive driver demerit arrangement under the National Driver Licensing Scheme. At December 2000, the Northern Territory Government is proposing only a partial scheme: to cover drivers of heavy commercial vehicles and to apply after February 2002, almost five years after CoAG resolved to implement the demerit points reform and more than 18 months after the second tranche reforms were due.

The Northern Territory Government considers that the comprehensive scheme envisaged by the National Driver Licensing Scheme does not deliver benefits to the Territory and, moreover, does not compromise the

achievement of competitive outcomes elsewhere. In circumstances such as this, where a government does not consider a reform endorsed by CoAG is relevant to it, the appropriate action is for that government to seek an exemption from CoAG for the requirement to implement the reform.

The Northern Territory Government has now requested an exemption from the ATC. The Council considers this indicates that the Territory intends to address its second tranche demerit points reform obligation consistent with the Federal Treasurer's 2 November 2000 decision. However, at 31 December 2000 – the date of the supplementary second tranche assessment set by the Treasurer – the outcome of the Territory's request was not known and there was no indication as to whether the ATC would support an exemption.

The Northern Territory Government argued that its request to the ATC means that it has 'complied as closely as is practical with the conditions laid down in the Treasurer's letter'. However, as there is as yet no response to the request, the Council cannot confirm either that an appropriate demerit points arrangement is or will be in place, or that the Territory is exempt from the demerit points obligation. In these circumstances, and given the time taken by the Northern Territory to implement an approach on this matter consistent with its obligations under NCP, the Council's view is that the Northern Territory has not satisfactorily complied with second tranche NCP road reform obligations.

Consistent with directions arising from the CoAG meeting of 3 November 2000 regarding the application of NCP, in considering any implications for NCP payments, the Council has had regard to:

- the extent of the overall commitment to the implementation of NCP by the Northern Territory;
- the effect of the Northern Territory's approach on other jurisdictions; and
- the impact of the Northern Territory's failure to implement the full demerit points reform.

The Council considers that the Northern Territory, having implemented all aspects of the second tranche road reform program other than a full demerit points scheme, has demonstrated a generally strong commitment to achieving its obligations under NCP.

However, the Council considers that the Northern Territory's failure to introduce a demerit points arrangement consistent with the National Driver Licensing Scheme endorsed by CoAG has potentially adverse safety outcomes. In particular, the failure to implement a comprehensive demerit points arrangement may reduce road safety as it could mean that drivers who would otherwise have had their licences suspended or

cancelled through an accumulation of demerit points would be able to continue to drive. This effect may be felt most directly in the Northern Territory, but also in other States and Territories to the extent that drivers licensed in the Northern Territory who would otherwise have their licence suspended or cancelled are able to drive.

The Council recommends that the current suspension of 5 per cent of the Northern Territory's NCP payments for 2000-01 be continued pending the decision by the ATC on whether the Northern Territory should obtain an exemption for the demerit points reform. In the event that the ATC agrees to the Territory request for an exemption, the Council recommends that the suspension be lifted and the suspended payment provided. In the event that the ATC does not agree that the Northern Territory should have an exemption for the demerit points reform, the Council recommends that the suspension be confirmed.

The Council considers that suspension of at least 5 per cent of NCP payments is necessary to encourage compliance with this aspect of the road reform program.

Appendix 1: Payments under the Second Tranche of National Competition Policy

NCP payments are dividends paid by the Commonwealth to the States and Territories for reform performance consistent with the obligations in the three inter-governmental NCP Agreements.

For the first three financial years (up to and including 1999-00), NCP payments comprised two elements: maintenance of the real per capita value of the Financial Assistance Grants and NCP payments. However, from 2000-01, as a result of the change in Commonwealth/State financial arrangements whereby States and Territories are to receive revenue raised through the GST (Goods and Services Tax), only the Competition Payment element will apply. Nonetheless, the States and Territories, as direct recipients of GST revenue, will continue to receive dividends from implementing NCP, through increased GST revenues arising from economic growth.

Maximum NCP payments across all States and Territories under the second tranche are approximately $1.1 billion. The maximum amounts each jurisdiction could receive, assuming satisfactory reform progress, are set out in Table A.1 below. Each State and Territory received maximum NCP payments in 1999-2000.

Table A.1: NCP payments for the second tranche by jurisdiction ($m)

State/Territory	1999-2000	2000-2001
New South Wales	211.9	156.5
Victoria	153.8	115.1
Queensland	120.4	86.2
Western Australia	62.5	45.6
South Australia	54.2	36.0
Tasmania	19.1	11.3
ACT	10.9	7.5
Northern Territory	14.7	4.7
Total for year	647.6	463.0

Source: Commonwealth Treasury, January 2001.

Appendix 2: Second tranche water reform assessment framework

Reform commitment: Cost reform and pricing

Major urbans and non-metropolitan urbans

Drawing on the advice of the Expert Group and complying with the ARMCANZ full cost recovery guidelines, jurisdictions are to implement full cost recovery.

Water businesses must price water between a floor price which allows for the continuing commercial viability of the system and a ceiling price which incorporates asset values and a rate of return but does not include monopoly profits:

- the floor price includes provision for future asset refurbishment or replacement using an annuity approach where service delivery is to be maintained; and

- the ceiling price includes provision for asset consumption and cost of capital calculated using a weighted average cost of capital (WACC).

Within the band, a water business should not recover more than operational, maintenance and administrative costs, externalities, taxes or tax equivalent regimes (TERs), the interest costs on debt, and dividends (if any) set at a level that reflects commercial realities and simulates a competitive market outcome.

The level of revenue should be based on efficient resource pricing and business costs. In determining prices, community service obligations (CSOs), contributed assets, the opening value of assets, externalities including resource management costs, and TERs should be transparent. The deprival value methodology should be used for asset valuation unless a specific circumstance justifies another method.

Jurisdictions must implement consumption based pricing. Two-part tariffs are to be put in place by 1998 where cost effective. Metropolitan bulk water and wastewater suppliers should charge on a volumetric basis.

Jurisdictions are to apply two-part tariffs to surface and groundwater comprising a fixed cost of access component and a volumetric cost component.

Metropolitan bulk water and wastewater suppliers must establish internal and external charges to include a volumetric component or two-part tariff

with an emphasis on the volumetric component to recover costs and earn a positive real rate of return.

Jurisdictions are to remove cross subsidies, with any remaining cross subsidies made transparent (published).

For the purposes of the framework, a cross subsidy exists where a customer pays less than the long run marginal cost and this is being paid for by other customers. An economic measure which looks at cross subsidies outside of a Baumol band, which sets prices between incremental and stand alone cost, is consistent with the CoAG objective of achieving economically efficient water usage, pricing and investment outcomes. To achieve the CoAG objective, potential cross-subsidies must be made transparent by ensuring the cost of providing water services to customers at less that long run marginal costs is met:

- as a subsidy, a grant or CSO; or
- from a source other than other customer classes.

Where service deliverers are required to provide water services to classes of customers at less than full cost, this must be fully disclosed and, ideally, be paid to the service deliverer as a community service obligation.

All CSOs and subsidies must be clearly defined and transparent. The departure from the general principle of full cost recovery must be explained. The Council will not make its own assessment of the adequacy of the justification of any individual CSO or cross-subsidy but will examine CSOs and cross-subsidies in totality to ensure they do not undermine the overall policy objectives of the strategic framework for the efficient and sustainable reform of the Australian water industry.

Publicly owned supply organisations should aim to earn a real rate of return on the written down replacement cost of assets for urban water and wastewater.

Jurisdictions are to have achieved progress toward a positive real rate of return on assets used in the provision of all urban water supply and wastewater services.

Rural water supply and irrigation services

Where charges do not currently cover the costs of supplying water to users (excluding private withdrawals of groundwater),[32] jurisdictions are to progressively review charges and costs so that they comply with the principle of full cost recovery with any subsidies made transparent.

Jurisdictions should provide a brief status report, consistent with advice provided to ARMCANZ, on progress towards implementation of pricing and cost recovery principles for rural services.

The Council will assess jurisdictions as having complied with the pricing principles applicable to rural water supply where jurisdictions have made cross-subsidies transparent and:

- have achieved full cost recovery; or
- have established a price path to achieve full cost recovery beyond 2001 with transitional CSOs made transparent; or
- for the schemes where full cost recovery is unlikely to be achieved in the long term, that the CSO required to support the scheme is transparent.

Jurisdictions are to conduct robust independent appraisal processes to determine economic viability and ecological sustainability prior to investment in new rural schemes, existing schemes and dam construction. Jurisdictions are to assess the impact on the environment of river systems before harvesting water.

Policies and procedures must be in place to robustly demonstrate economic viability and ecological sustainability of new investments in rural schemes prior to development. The economic and environmental assessment of new investment must be opened to public scrutiny.

Jurisdictions must demonstrate a strong economic justification where new investment is subsidised.

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[32] Private withdrawals of groundwater include private providers and small co-operatives who extract water from bores for private use, but does not include large co-operative arrangements (including trusts) that act as wholesalers supplying water as a commercial venture and that are subject to control or directions by government or receive substantial government funding.

Jurisdictions are to devolve operational responsibility for the management of irrigation areas to local bodies subject to appropriate regulatory frameworks.

All impediments to devolution must be removed. Jurisdictions must demonstrate that they are encouraging and supporting devolution of responsibility, including through education and training.

Reform commitment: Institutional reform

Institutional role separation

As far as possible the roles of water resource management, standard setting and regulatory enforcement and service provision should be separated institutionally by 1998.

The Council will look for jurisdictions, at a minimum, to separate service provision from regulation, water resource management and standard setting. Jurisdictions will need to demonstrate adequate separation of roles to minimise conflicts of interest.

Metropolitan service providers must have a commercial focus, whether achieved by contracting out, corporatisation, privatisation etc, to maximise efficiency of service delivery.

Incorporate appropriate structural and administrative responses to the CPA obligations, covering legislation review, competitive neutrality, and structural reform.

Performance monitoring and best practice

ARMCANZ is to develop further comparisons of interagency performance with service providers seeking best practice.

Jurisdictions have established a national process to extend inter-agency comparisons and benchmarking. Benchmarking systems are to be put in place for the non major urbans and rural sectors, 'WSAA Facts' is to be used for major urbans, and service providers are to participate.

The Council will accept compliance for the three sectors subject to the Productivity Commission confirming consistency with the Report of the Steering Committee on National Performance Monitoring of Government Trading Enterprises: *Government Trading Enterprises Performance Indicators* (19XX). The Productivity Commission has already confirmed the consistency of 'WSAA Facts' for the major urbans. The Council recognises the first reports for the non major urbans and rural sectors are likely to be a rough cut in the initial years.

Reform commitment: Allocations and trading

There must be comprehensive systems of water entitlements backed by separation of water property rights from land title and clear specification of entitlements in terms of ownership, volume, reliability, transferability and, if appropriate, quality.

A 'comprehensive' system requires that a system of establishing water allocations which recognises both consumptive and environmental needs should be in place. The system must be applicable to both surface and groundwater.

The legislative and institutional framework to enable the determination of water entitlements and trading of those entitlements should be in place. The framework should also provide a better balance in water resource use including appropriate allocations to the environment as a legitimate user of water in order to enhance/restore the health of rivers. If legislation has not achieved final parliamentary passage, the Council will recognise the progress towards achieving legislative change during its assessment of compliance.

Jurisdictions must develop allocations for the environment in determining allocations of water and should have regard to the relevant work of ARMCANZ and ANZECC.

Best available scientific information should be used and regard had to the inter-temporal and inter-spatial water needs of river systems and groundwater systems. Where river systems are overallocated or deemed stressed, there must be substantial progress by 1998 towards the development of arrangements to provide a better balance in usage and allocations for the environment.

Jurisdictions are to consider environmental contingency allocations, with a review of allocations 5 years after they have been initially determined.

Jurisdictions must demonstrate the establishment of a sustainable balance between the environment and other uses. There must be formal water provisions for surface and groundwater consistent with ARMCANZ and ANZECC: '*National Principles for the Provision of Water for Ecosystems*'.

Rights to water must be determined and clearly specified. Dormant rights must be reviewed as part of this process. When issuing new entitlements, jurisdictions must clarify environmental provisions and ensure there is provision for environmental allocations.

For the second tranche, jurisdictions should submit individual implementation programs, outlining a priority list of river systems and groundwater resources, including all river systems which have been over-allocated, or are deemed to be stressed and detailed implementation actions and dates for allocations and trading to the Council for agreement, and to Senior Officials for endorsement. This list is to be publicly available.

It is noted that for the third tranche, States and Territories will have to demonstrate substantial progress in implementing their agreed and endorsed implementation programs. Progress must include at least allocations to the environment in all river systems which have been over-allocated, or are deemed to be stressed. By the year 2005, allocations and trading must be substantially completed for all river systems and groundwater resources identified in the agreed and endorsed individual implementation programs.

Arrangements for trading in water entitlements must be in place by 1998. Water should be used to maximise its contribution to national income and welfare.

Where cross border trade is possible, trading arrangements must be consistent between jurisdictions and facilitate trade. Where trading across State borders could occur, relevant jurisdictions must jointly review pricing and asset valuation policies to determine whether there is any substantial distortion to interstate trade.

Jurisdictions must establish a framework of trading rules, including developing necessary institutional arrangements from a natural resource management perspective to eliminate conflicts of interest, and remove impediments to trade. The Council will assess the adequacy of trading rules to ensure no impediments. If legislation has not achieved final parliamentary passage, the Council will recognise the progress towards achieving legislative change during its assessment of compliance.

As noted above, for the second tranche, jurisdictions should submit individual implementation programs, outlining a priority list of river systems and groundwater resources and detailed implementation actions and dates for allocations and trading to the Council for agreement, and to Senior Officials for endorsement. This list is to be publicly available.

Cross border trading should be as widespread as possible. Jurisdictions are to develop proposals to further extend interstate trading in water.

Reform commitment: Environment and water quality

Jurisdictions must have in place integrated resource management practices, including:

- ***demonstrated administrative arrangements and decision making processes to ensure an integrated approach to natural resource management and integrated catchment management;***
- ***an integrated catchment management approach to water resource management including consultation with local government and the wider community in individual catchments; and***
- ***consideration of landcare practices to protect rivers with high environmental values.***

The Council will examine the programs established by jurisdictions to address areas of inadequacy. Programs would desirably address such areas as government agency coordination, community involvement, coordinated natural resource planning, legislation framework, information and monitoring systems, linkages to urban and development planning, support to natural resource management programs and landcare practices contributing to protection of rivers of high environmental value.

Support ANZECC and ARMCANZ in developing the National Water Quality Management Strategy, through the adoption of market-based and regulatory measures, water quality monitoring, catchment management policies, town wastewater and sewerage disposal and community consultation and awareness.

Jurisdictions must have finalised development of the National water Quality Management Strategy and initiated activities and measures to give effect to the National Water Quality Management Strategy.

Reform commitment: Public consultation, education

Jurisdictions must have consulted on the significant CoAG reforms (especially water pricing and cost recovery for urban and rural services, water allocations and trade in water entitlements). Education programs related to the benefits of reform should be developed.

The Council will examine the extent and the methods of public consultation, with particular regard to pricing, allocations and trade. The Council will look for public information and formal education programs,

including work with schools, in relation to water use and the benefits of reform.

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